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Nunquam aliud Natura, aliud Sapientia dicit.
Juv. Sat. XIV. 321.

LONDON:
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To his Honoured Friend

Mr. *GEORGE WHITE*,

Of *London*, MERCHANT;

This TRACTATE

Concerning the

LAW of *NATURE*,

IS

Offered, Dedicated, Presented,

BY

His humbleſt

and moſt obliged Servant,

The Tranſlator.

TO THE
READER.

T*HE Translator having observed, in most of the Disputes wherewith the present Age is disquieted, frequent Appeals made, and that very properly, from* Laws and Ordinances of a meaner Rank *to the everlasting* Law of Nature, *gave himself the Pains to turn over several Writers on that Subject. He chanced, he thinks with great Reason, to entertain an Opinion, that this Author was the clearest, the fullest, and the most unprejudiced of any he met with: And hereupon, that he might the better possess himself of his Reasonings, he attempted to render the Work into*

Mother-Tongue, after he had first endeavoured to set several better Hands upon the Undertaking, who all for one Reason or other declined the Toil. He thought when 'twas done, it might be as acceptable to one or other to read it, as it had been to himself to translate it.

Concerning the Author, *'tis enough to say, that he has surely had as great Regard paid him from Personages of the highest degree, as perhaps ever was given to the most learned of Men; having been invited from his Native Country, first by the* Elector Palatine, *to be Professor of the* Law of Nature and Nations *in the University of* Heidelberg; *then by the King of* Sweden *to honour his new rais'd Academy, by accepting the same Charge therein, and afterwards being admitted of the* Council, *and made Historiographer, both to the same King, and to his Electoral Highness of* Brandenburgh, *afterwards King of* Prussia.

Concerning this his Work, it is indeed only as it were an Epitome of the Author's large Volume of The Law of Nature and Nations: *But as this Epitome was made and published by himself, the Reader cannot be under any doubt, but that he has here the Quintessence of what*

what is there deliver'd; what is par'd off being mostly Cases in the Civil Law, *Refutations of other Authors, and some Notions too fine and unnecessary for a Manual. How good an Opinion the learned World has of this his Performance, is very evident from the many Editions there have been of it, not only in the Original* Latin, *but in the Modern Languages, publish'd in* Sweden, Holland, France, Germany, *and* England.

Since the first Publication hereof in 1673, *at* Lunden, *the Author revis'd his larger Work, and put out a new Edition of it, with many Additions and great Improvements; and from thence this Work also has been amended and enlarged, by extracting these additional Chapters, and inserting them as compendiously as might be into their proper Places; which was first done in a* German *Translation, and afterwards in a* Latin *Edition, published by the Professor of* Giessen, *both in the Life-time of the Author, with his Knowledge, and by his Approbation; so that the Reader may be satisfied that these Additions, now first inserted into this Translation, are as genuine as the Rest of the Work; as he will find them as useful and necessary a Part, as any of the whole Book. Besides these, in this*

this Impression, some other Additions and Alterations have been found necessary to be made: For whereas in some Places the Author's Opinion was delivered in so brief or obscure a Manner, that his Meaning seemed difficult to be apprehended; again in other Places the Coherence and Connection of his Discourses did not sufficiently appear; to remedy the former of these Defects, all intricate Phrases and Expressions have been changed, and where even that was not sufficient to make the Author's Mind plain and clear, it is explained and illustrated by adding proper Instances and Examples; and then to repair the latter Defect, the Order of some of the Sections hath been changed, and proper and necessary Transitions to many of them have been added; the taking which Liberty, 'tis to be hoped, will ever appear most justifiable, since thereby the Rules of Method are better observ'd, and the Sense of the Author rendered more perspicuous than in the former Editions of this Translation.

But farther, to make this Edition still more compleat and useful than the former, to each Section References are continually made to the large Work of The Law of Nature and Nations, *and, as often as could be, to* The Rights

of

 1990

of War and Peace; *that those who read this Epitome, and have a mind to see any Point therein more fully handled and illustrated, may be readily directed, where to have recourse to the Place where it is at large discoursed of, not only by this Author himself, but also by* Grotius, *an Author of equal Reputation for his judicious and learned Writings on Subjects of the same nature. Besides these References, as some of the Author's Opinions, laid down in this Treatise, have been controverted by some Writers, and defended by the Author in some other of his Works, the Reader is directed to those Places in them where these Cavils and Exceptions are taken notice of, and satisfactorily answered. But then, when any Exceptions can justly be made, and there is good Reason for differing from the Author's Opinion in any Point, the Reasons are given for so doing in some Notes at the Bottom of the Page; which Notes, however, are neither many nor long, since it would be very absurd to run into Prolixity in Comments to a Work where Brevity is principally aim'd at; into which therefore nothing ought to be admitted, but what is essentially and absolutely necessary to the Subject treated of. And on this Account also it is, that whereas the same Matters have, in the former Editions, been found*

to

to occur in more than one Place, in this Edition ſuch ſuperfluous Repetitions have been par'd off, by putting together what has been ſaid on the ſame Point in different Places, and comprehending the whole under one Head or Section. And laſtly, that nothing might be wanting to render this in all Points perfect, a Compleat Index *is added.*

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THE

THE

AUTHOR's

PREFACE.

HAD not the *Custom* which has so generally obtain'd among Learned Men, almost procured to it self the Force of a *Law*, it might seem altogether superfluous to premise a Word concerning the Reason of the * present Undertaking; the Thing it self plainly declaring my whole

The Author's Design.

* *Ann.* 1673. *published in* Suedish *a Year after his large Work.*

Deſign to be, the giving as *ſhort*, and yet, if I miſtake not, as *plain* and *perſpicuous* a *Compendium* of the moſt material Articles of the *Law of Nature*, as was poſſible; and this, leſt, if ſuch as betake themſelves to this Study ſhould enter thoſe vaſt Fields of Knowledge without having fully imbibed the Rudiments thereof, they ſhould at firſt ſight be terrified and confounded by the Copiouſneſs and Difficulty of the Matters occurring therein. And, at the ſame time, it ſeems plainly a very expedient Work for the Publick, that the Minds, of Youth eſpecially, ſhould be early imbu'd with that *Moral Learning*, for which they will have ſuch manifeſt Occaſion, and ſo frequent Uſe, through the whole Courſe of their Lives.

And altho' I have always looked upon it as a Work deſerving no

great Honour, * to *Epitomize* the larger Writings of others, and more especially one's own; yet having thus done out of Submission to the commanding Authority of my Superiors, I hope no honest Man will blame me for having endeavoured hereby to improve the Understandings of *Young* Men more particularly; to whom so great Regard is to be had, that whatsoever Work is undertaken for their sakes, tho' it may not be capable of great Acuteness or splendid Eloquence, yet it is not to be accounted unworthy of any Man's Pains. Beside, that no Man, in his Wits, will deny, that these Principles thus laid down are more conducive to the understanding of *all Laws* in general, than any Elements of the *Law Civil* can be.

* See *Julius Rondinus præf. ad Erud. Scand. in Post-scripto & Comment. ad Pullum. Ven. Lips.* p. 46, 47.

And this might have sufficed for the present; but I am minded by some, that it would not be improper to lay down some few Particulars, which will conduce much to a right Understanding of the Constitution of the *Law of Nature*, and for the better ascertaining its just Bounds and Limits. And this I have been the more ready to do, that I might on this occasion obviate the Pretences of some over-nice Gentlemen, who are apt to pass their squeamish Censures on this Sort of Learning, which in many Instances, is wholly separate from their Province.

Three Sciences by which Men come to a knowledge of their Duty.

Now 'tis very manifest, that Men derive the Knowledge of their Duty, and what is fit to be done, or to be avoided in this Life, as it were, from *three Springs*, or Foun-

tain-

tain-Heads; to wit, From the *Light of Nature*, From the *Laws and Constitutions of Countries*; And from the *special Revelation of Almighty God*.

From the First of these proceed all those most common and ordinary Duties of a Man; more particularly those that constitute him a *sociable Creature* with the Rest of Mankind: From the Second are derived all the Duties of a Man, as he is a *Member* of any particular *City* or *Common-wealth*: From the Third result all the Duties of a *Christian* Man.

And from hence proceed *three* distinct *Sciences*: The *first* of which is of the *Law of Nature*, common to all Nations; the *second* is of the *Civil* or *Municipal Law* peculiar to each Country, which is or may be as manifold and various as there

are different States and Governments in the World; the *third* is *Moral Divinity*, as it is contra-distinct to that Part of Divinity, which is conversant in explaining the Articles of our Faith.

The difference between the Law of Nature, Civil Law *and* Moral Theology.

Each of these Sciences hath a peculiar Way of proving their Maxims, according to their own Principles. The *Law of Nature* asserts, that this or that Thing ought to be done, because from *right Reason* it is concluded, that the same is necessary for the Preservation of Society amongst Men.

The fundamental Obligation we lie under to the *Civil Law* is, that the *Legislative Power* has enacted this or that Thing.

The Obligation of *Moral Divinity* lies wholly in this; because God,

God, in the Sacred *Scripture*, has ſo commanded.

Now, as the *Civil Law* preſuppoſes the *Law of Nature*, as the more general Science; ſo if there be any thing contained in the *Civil Law*, wherein the *Law of Nature* is altogether *ſilent*, we muſt not therefore conclude, that the one is any ways *repugnant* to the other. In like manner, if in *Moral Divinity* ſome Things are delivered, as from Divine Revelation, which by our Reaſon we are not able to comprehend, and which on that Score are above the Reach of the *Law of Nature*; it would be very abſurd from hence to ſet the one againſt the other, or to imagine that there is any real *Inconſiſtency* between theſe Sciences. On the other hand, in the Doctrine of the *Law of Nature*, if any things are to be preſuppoſed, becauſe ſo

The Maxims of theſe three Sciences in no wiſe oppoſite or contradictory to each other.

much may be inferred from *Reason*, they are not to be put in Opposition to those Things which the *Holy Scripture* on that Subject delivers with greater Clearness; but they are only to be taken in an abstracted Sense. Thus, for Example, from the *Law of Nature*, abstracted from the Account we receive thereof in Holy Writ, there may be formed an *Idea* of the Condition and State of the *first Man*, as he came into the World, only so far as is within the Comprehension of *Human Reason*. Now, * to set those Things in opposition to what is delivered in Sacred Writ concerning the same State,

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* See L. N. N. *l.* II. *c.* 1. § 8. *c.* 11. § 2. *Dissert Acad.* X. de statu Nat. § 3. *Eris. Scand præf. Rondini Apol. advers. Indicem Novitat.* § 11, 12, 16. *p.* 20. *seq. Specim. Controv. c.* 3. § 1, 3. & *p.* 20 *c.* 4. § 16. *p.* 217, 258. *sequ. Spicileg Controv c.* 2. § 1. 13, 15. *c.* 3 § 1. *p* 357, 380. *sequ. Rondin. Dissert, Epist.* § 1. *p.* 396. & *Postscript. ad Seckendorff. Puffendorf. Epist. ad Amic. Erid. p.* 133. *Comment. super Pullo Lips. Ven. p.* 11, 16, 36, 44, 45. 52, 54

would

would be the greatest Folly and Madness in the World.

But as it is an easie Matter to reconcile the *Civil Law* with the *Law of Nature*; so it seems a little more difficult to set certain Bounds between the same *Law of Nature* and *Moral Divinity*, and to define in what Particulars chiefly they differ one from the other.

Upon this Subject I shall deliver my Opinion briefly, not with any Papal Authority, as if I was exempt from all Error by any peculiar Right or Priviledge, neither as one who pretends to any Enthusiastick Revelation; but only as being desirous to discharge that Province which I have undertaken, according to the best of my Ability. And, as I am willing to hear all Candid and Ingenuous Persons, who can

inform

inform me better; and am very ready to retract what I have said amiss; so I do not value those Pragmatical and Positive Censurers and Busie-bodies, who boldly concern themselves with Things which no ways belong to them: Of these Persons we have a very Ingenious Character given by *Phædrus*: * *They run about*, says he, *as mightily concerned; they are very busie even when they have nothing to do; they puff and blow without any occasion; they are uneasie to themselves, and troublesome to every body else.*

The difference between the Law of Nature and Moral Theology.

Now the Chief Distinction, whereby these Sciences are separated from one another, proceeds

---

* *Est Ardeliorum quædam Romæ Natio,*
Trepidè concursans, occupata in otio,
Gratis anhelans, multa agendo nihil agens,
Sibi molesta & aliis odiosissima.
Phæd. Lib. II. Fab. 5.

from

from the different Source or Spring whence each derives its *Principles*; and of which I have already discoursed. From whence it follows, if there be some things, which we are enjoined in Holy Writ either to do or forbear, the Necessity whereof cannot be discover'd by *Reason alone*, they are to be looked upon as out of the Cognizance of the *Law of Nature*, and properly to appertain to *Moral Divinity*.

1st. They differ in the Source from whence each derives its Principles.

Moreover, in *Divinity* the Law is considered as it has the Divine Promise annexed to it, and with Relation to the Covenant between God and Man; from which Consideration the *Law of Nature* abstracts, because the other derives it self from a particular *Revelation* of God Almighty, and which *Reason* alone could not have found out.

2d. Difference in the Manner whereby the Laws of them both are proposed.

3d. *Difference in the End and Design of them both.*

But the greatest Difference between them is this; that the main End and Design of the *Law of Nature* is included within the Compass of * this Life only, and so thereby a Man is informed how he is to live in Society with the Rest of Mankind: But *Moral Divinity* instructs a Man how to live as a

* It is true that Revelation has, beyond all doubt, asserted and given full Evidence of the Immortality of the Soul, and of the Certainty of Rewards and Punishments in the World to come: It is also certain, that the fundamental and distinguishing Principle of Moral Theology, is the Hope of a blessed Eternity, promised to those who direct their Lives by Gospel Precepts. However, we must not therefore take from the *Law of Nature* all Regard to a future Life: For we may, by the meer Light of Reason, proceed so far at least, as to discover, that it's not improbable, that God will punish in another World, those who have wilfully violated the *Law of Nature*, and have thereupon suffered neither Human nor Divine Punishment in this Life; nay farther, that this Opinion is much more probable than the contrary one to it. If this be so, it is agreeable to the *Laws* of Prudence and good Sense, that no Man, for the sake of a short and transient Satisfaction, should expose himself even to a Possibility of being eternally miserable: And thus far the Fear of being punished in the Life to come, may very justly be said to appertain to the Sanction of the *Law of Nature*. See *L. N. N. lib.* 2. *c.* 3. § 21.

Christian;

Chriſtian; who is not only obliged to live honeſtly and virtuouſly in this World, but is beſides in earneſt Expectation of the Reward of his Piety after this Life; and therefore he has his Converſation in Heaven, but is here only as a Stranger and a Pilgrim. For although the Mind of Man does with very great Ardency purſue after Immortality, and is extremely averſe to its own Deſtruction; and thence it was, that moſt of the Heathens had a ſtrong Perſuaſion of the ſeparate State of the Soul from the Body, and that then Good Men ſhould be *rewarded*, and Evil Men *puniſhed*; yet notwithſtanding ſuch a ſtrong Aſſurance of the Certainty hereof, upon which the Mind of Man can firmly and entirely depend, is to be derived only from the *Word of God*. Hence it is that the Dictates of the *Law of Nature* are adapted only to *Human*

Judicature,

Judicature, which does not extend it ſelf beyond this Life; and it would be abſurd in many reſpects to apply them to the Divine *Forum*, which concerns it ſelf only about Theology.

4th Difference in reſpect to the Object of each of them.

From whence that alſo follows, that, becauſe *Human Judicature* regards only * the external Actions of Man, but can no ways reach the Inward Thoughts of the Mind, which do not diſcover themſelves by any outward Signs or Effects; therefore the *Law of Nature* is for the moſt part exerciſed in forming the outward Actions of Men. But *Moral Divinity* does not content it ſelf in regulating only the *Exterior Actions*; but is more peculiarly intent in forming the *Mind*, and its

* *Eriſ. Scandic Specim. Controverſ. c.* 4. § 19. *p.* 262. *Spicileg. c.* 1. § 20. *p.* 355, *&c. c.* 11. § 10. *p.* 371. *Epiſt. ad Amicos. p.* 133.

internal

internal Motions, agreeable to the good Pleasure of the Divnie Being; disallowing those very Actions, which *outwardly* look well enough, but proceed from an impure and corrupted *Mind*. And this seems to be the Reason why the Sacred Scripture doth not so frequently treat of those Actions, that are under certain Penalties by Human Laws, as it doth of those, which, as *Seneca* expresses it, * are out of the Reach of any such Constitutions. And this will manifestly appear to those, who shall carefully consider the Precepts and Virtues that are therein inculcated; altho', as even those Christian Virtues do very much dispose the Minds of Men towards the maintaining of mutual Society; so like-

* *Quam angusta innocentia est ad legem bonum esse? Quanto latius Officiorum patet quam Juris Regula? Quàm multa Pietas, Humanitas, Liberalitas, Justitia, Fides exigunt, quæ omnia extra Publicas Tabulas sunt?* Seneca de Ira, lib. 2, cap. 27.

wise

wise *Moral Divinity* does mightily promote the Practice of all the main Duties that are enjoyn'd us in our Civil Deportment: So that, * if you should observe any one behave himself like a restless and troublesome Member in the Common-wealth, you may fairly conclude, that the Christian Religion has made but a very slight Impression on that Person, and that it has taken no Root in his Heart.

And from these Particulars, I suppose, may be easily discovered; not only the certain Bounds and Limits which distinguish the *Law of Nature*, as we have defined it, from *Moral Divinity*; but it may likewise be concluded, that the *Law of Nature* is no way repugnant to the Maxims of *sound Divinity*; but is only

* *Dissert. Acad.* IV. *de Systemat Civit.* § 7. & IX. *de Concord. veræ polit. cum Relig. Christ.*

ly

ly to be abstracted from some particular Doctrines thereof, which cannot be fathom'd by the Help of Reason alone. From whence also it necessarily follows, that in the Science of the *Law of Nature*, a Man should be now consider'd, as being deprav'd in his very Nature, and upon that Account, as a Creature, subject to many vile Inclinations: * For although none can be so stupid as not to discover in himself many Evil and inordinate Affections, nevertheless, unless we were inform'd so much by Sacred Writ, it would not appear, that this Rebellion of the Will was occasioned by the first Man's Transgression; and consequently, since the *Law of Nature* does not reach those Things which are above Reason, it would be very preposterous to derive it from

In regard to the Law of Nature we are to consider Man, in the depraved State he has been, since the first Transgression.

* *Specim. Controv. c.* 1. § 2.

 the

the State of Man, as it was uncorrupt before the Fall, * especially since even the greatest Part of the Precepts of the *Decalogue*, as they are deliver'd in Negative Terms, do manifestly presuppose the *deprav'd State* of Man. Thus, for Example, in the First and Second Commandment, it seems to be supposed, that Mankind was naturally prone to the Belief of *Polytheism* and to *Idolatry*. For if you should consider Man in his Primitive State, wherein he had a clear and distinct Knowledge of the Deity, as it were by a peculiar Revelation; I do not see how it could ever enter into the Thoughts of such a one, to frame any Thing to himself to which he could pay Reverence, instead of, or together with, the true GOD; or to believe any Divinity to reside in that which

* *Præfat. p. 1. ad Jur. Nat. & Gent. Postscript. Rondini ad Seckendorf. Apol.* § 28. *Specim. Controv.* c 4. § 12, 17. *Spicileg.* c. 11. § 1, 5, 6, 8, 14. *Comment. ad Ven. Lips. p.* 37.

his

his own Hands had form'd; therefore there was no Necessity of laying an Injunction upon him in Negative Terms, that he should not worship other Gods; but this Plain Affirmative Precept would have been sufficient; *Thou shalt love, honour, and adore GOD, whom you know to have created both your self, and the whole Universe.* And the same may be said of the Third Commandment: For why should it be forbidden, in a Negative Precept, to blaspheme God, to such a one who had at the same time a clear and perfect Understanding of his Bounty and Majesty; and who was actuated by no inordinate Affections, and whose Mind did chearfully acquiesce in that Condition, wherein he was placed by Almighty God? How could such a one be Guilty of so great Madness? But he needed onely to have been admonish'd by this

Affirmative Precept; *That he should glorifie the Name of GOD.* But it seems otherwise of the Fourth and Fifth Commandments; which, as they are Affirmative Precepts, neither do they necessarily presuppose the deprav'd State of Man, they may be admitted, Mankind being consider'd as under *either* Condition. But the thing is very manifest in relation to the other Commandments, which concern our Neighbour; for it would suffice plainly to have enjoyn'd Man, consider'd as he was first created by GOD, that he should love his Neighbour, whereto he was beforehand inclin'd by his own Nature. But how could the same Person be commanded, that he should not *kill*, when Death had not as yet fall'n on Mankind, which enter'd into the World upon the account of Sin? But now there is very great Need of such a Negative

Command, when, instead of loving one another, there are stir'd up so great Feuds and Animosities among Men, that even a great Part of them is owing purely to Envy, or an inordinate Desire of invading what belongs to another; so that they make no scruple, not only of destroying those that are innocent, but even their Friends, and such as have done them signal Favours; and all this, forsooth, they are not asham'd to disguise under the specious Pretence of Religion and Conscience. In like manner, what Need was there expresly to forbid *Adultery*, among those married Persons, whose mutual Love was so ardent and sincere? Or, what Occasion was there to forbid *Theft*, when as yet Covetousness and Poverty were not known, nor did any Man think that properly his own, which might be useful or pro-

 fitable

fitable to another? Or, to what purpose was it to forbid the bearing *False Witness*, when as yet there were not any to be found, who sought after Honour and Reputation to themselves, by Slandering and Aspersing others with false and groundless Calumnies? So that not unfitly, you may here apply the Saying of *Tacitus*, * *Whilst no corrupt Desires deprav'd Mankind, the first Men liv'd without Sin and Wickedness, and therefore free from Restraint and Punishment; and whereas they coveted nothing but what was their due, they were barr'd from nothing by Fear.*

Whether the Law of Nature

And these Things being rightly understood, may clear the way for removing this Doubt; † whether

* *Vetustissimi Mortalium, nullâ adhuc pravâ libidine, sine probro, et scelere, eóque sine pœna aut coercitionibus agebant; & ubi nihil contra morem cuperent, nihil per metum vetabantur.*

Tacit. Annal. Lib. III. Cap. XXVI.

† *Eris. Scandic. Specim. Contr. l. 4. § 10. p. 263.*

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the Law was different, or the ſame, in the Primitive State of Nature, before the Fall? Where it may be briefly anſwer'd. That the moſt *material* Heads of the Law were the ſame in each State; but that many *particular* Precepts did *vary*, according to the *Diverſity* of the Condition of Mankind; or rather, that the ſame Summary of the Law was explain'd by *diverſe*, but not *contrary* Precepts; according to the different State of Man, by whom that Law was to be obſerv'd. Our Saviour reduced the Subſtance of the Law to two Heads: *Love God, and Love thy Neighbour*: To theſe the whole *Law of Nature* may be referr'd, as well in the Primitive, as in the Deprav'd State of Man; (unleſs that in the Primitive State there ſeems not any, or a very ſmall Difference between the *Law of Nature*, and *Moral Divinity.*) For that Mutual

would have been the ſame it is now, had Man continu'd in his State of Innocence.

 Society,

Society, which we laid down as a Foundation to the *Law of Nature*, may very well be resolv'd into the Love of our Neighbour. But when * we descend to particular Precepts, there is indeed a very great Difference, both in relation to the Commands and Prohibitions.

And as to what concerns the Commands, there are many which have place in this State of Mankind, which seem not to have been necessary in the Primitive State: And that partly, because they presuppose such a Condition, as, 'tis not certain, could happen to that most happy State of Mankind; partly, because there can be no Notion of them, without admitting *Misery* and *Death*, which were unknown there: As for Instance, we are now enjoyn'd by the Precepts of the *Law of Nature*, not to deceive

* *Spicileg.* c. 1. §. 17.

one

one another in Buying or Selling, not to make use of false Weights or Measures, to repay Money that is lent, at the appointed Time. But it is not yet evident, whether, if Mankind had continu'd without Sin, there would have been drven any Trade and Commerce, as there is now in the World; or whether there would then have been any Occasion for the Use of Money. In like manner, if such Kind of Communities as are now adays, were not to be found in the State of Innocence, there would be then likewise no Occasion for those Laws which are presuppos'd as requisite for the well-ordering and Government of such Societies. We are also now commanded by the *Law of Nature. To succour those that are in Want. To relieve those that are oppressed. To take care of Widows and Orphans.* But it would be to no purpose

pose to have inculcated these Precepts to those who were no ways subject to Misery, Poverty, and Death. The *Law of Nature* now enjoyns us, *To forgive Injuries*; and, *To use our utmost Endeavours towards the promoting of Peace amongst all Mankind.* Which would be unnecessary among those who never offended against the Laws of Mutual Society. And this too is very evident in the Prohibitory Precepts which relate to the Natural, not Positive, Law. For although every Command does virtually contain in it self a Prohibition of the opposite Vice; (as, for Instance, he that is commanded to love his Neighbour, is at the same time forbidden to do such Actions, as may any ways thwart or contradict his Duty of Love:) Yet it seems superfluous that these things should be ordain'd by express Commands, where there are no disorder-

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ly Inclinations to excite Men to the committing ſuch Wrongs. For the Illuſtration of which, this may be taken notice of, that * *Solon* would by no Publick Law enact any Puniſhment for *Parricides*, becauſe he thought that no Child could be guilty of ſo horrid an Impiety. In like manner we find an Account, in the † Hiſtory of the *Weſt-Indies*, concerning the People of *Nicaragua*; that in their Laws no Puniſhment was appointed for thoſe who ſhould kill the *Cacique*, by which Name they call their Princes; becauſe, ſay they, there can be no Subject, who would contrive or perpetrate ſo baſe an Action. I am afraid it may ſavour too much of Affectation to enlarge any farther in the

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* *Diog. Laert. lib.* 1. § 59. *Edit. Amſtelod.*

† *Franc. Lopez de Gommara, Hiſt. General. IndOccid. Cap.* 207.

Proof

Proof of what is in it ſelf ſo clear and evident. Yet I ſhall add this one Example, fitted to the meaneſt Capacity. Suppoſe there are two Children, but of different Diſpoſitions, committed to the Care of a certain Perſon: One of which is Modeſt and Baſhful, taking great delight in his Studies; the other proves Unruly, and Surly; giving himſelf over more to looſe Pleaſures, than to Learning. Now the Duty of both theſe is the ſame, To follow their Studies; but the particular Precepts, proper to each, are different; for it is ſufficient to adviſe the Former to what Kind of Studies he muſt apply himſelf, at what Time, and after what Manner they are to be follow'd: But for as the Other, he muſt be enjoyn'd under ſevere Penalties, not to Wander abroad, not to Game,

not

not to ſell his Books, not to get others to make his Exerciſes, not to play the good Fellow, not to run after Harlots. Now if any one ſhould undertake, in a ſet Diſcourſe, to declaim againſt theſe things to him of the contrary Temper, the Child might very well enjoyn him Silence, and bid him inculcate them to any Body elſe, rather than to him, who takes no Delight or Pleaſure in ſuch Practices. From whence I look upon it as manifeſt, that the *Law of Nature* would have a quite different Face, if we were to conſider Man, as he was in his Primitive State of Innocence.

And now ſince the Bounds and Limits of this Science, whereby it is diſtinguiſh'd from Moral Divinity, are ſo clearly ſet down, it ought

ought at least to have the same Privilges with other Sciences, as the Civil Law, Physick, Natural Philosophy, and the Mathematicks; wherein if any Unskilful Person presume to meddle, assuming to himself the Quality of a Censor, without any Authority, he may fairly have that objected to him, which was formerly done by * *Apelles* to *Megabyzus*, who undertook to talk at random about the Art of Painting; *Pray*, said he, *be silent, lest the Boys laugh at you, who pretend to talk of Matters you do not understand.*

NOW, upon the whole, I am content to submit to the Judgment of Discreet and Intelligent Per-

* Rather *Zeuxis*, *Æl. V. H.* II. 2. *Plut. de. Adulat.*

ſons; but as for Ignorant and Spiteful Detractors, 'tis better to leave 'em to themſelves, to be Puniſh'd by their own Folly and Malice; ſince according to the Ancient Proverb, *The Ethiopian cannot change his Skin.*

THE

THE *Whole Duty of MAN*, According to the LAW OF NATURE.

BOOK I. CHAP. I.

Of Human Actions in general, the Principles of 'em, and how to be accounted for, or imputed.

I. What Duty is.

WHAT we mean here by the Word DUTY, is, *That* * Action *of a Man, which is regularly order'd according to some prescrib'd* Law, *which he is oblig'd to obey.* To the Understanding whereof it is necessary to premise

* The ancient *Stoicks* call'd *Actions* by the Greek Word καθῆκον, and by the Latin OFFICIUM, and in English we use the Word *OFFICE* in the same Sense, when we say, *Friendly Offices*, &c. but then the Definition hereof given by the Philosophers, is too loose and general, since thereby they understood nothing but an

premise somewhat, as well touching the Nature of a *Human Action*, as concerning *Laws* in general.

II. *What a Human Action.* By a *Human Action* we mean not *every Motion* that proceeds from the Faculties of a Man; but such only as have their Original and Direction from those Faculties which God Almighty has endow'd Mankind withal, distinct from Brutes; that is, such as are undertaken by the Light of the *Understanding*,* and the Choice of the *Will*.

III. *Human Capacity. Knowing and Chusing.* L. N. N. l. 1. c. 1. § 2. c. 3. § 1. For it is not only put in the Power of Man to *know* the various Things which appear in the World, to *compare* them one with another, and from thence to form to himself new *Notions*; but he is able to look forwards, and to consider *what* he is to do, and to carry himself to the Performance of it, and this to do after some certain *Manner*, and to some certain *End*; and then he can collect what will be the Consequence thereof. Beside, he can make a *Judgment* upon Things already done, whether they are done agreeably to their Rule. Not that all a Man's Faculties do exert themselves continually, or after the same manner, but some of them are stir'd up in him by an internal Impulse, and when rais'd, are by the same regulated and guided. Neither beside has a Man the same Inclination to every Object; but some he Desires, and for others he has an Aversion: And often, though

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Action conformable to Reason. As may appear from a Passage of *Cicero* (*de Fin. Bon. & Mal. L.* 3. *c.* 17.) *Quod autem ratione actum sit, id* OFFICIUM *appellamus.* See also *De Offic. l.* 1. *c.* 3. & *Diogenes Laertius Lib.* VII. *Sect.* 107, 108.

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an Object of Action be before him, yet he *suspends* any Motion towards it; and when many Objects offer themselves, he *chuses* one and *refuses* the rest.

As for that Faculty therefore of comprehending and judging of Things, which is called the *Understanding*; it must be taken for granted, first of all, * That every Man of a mature Age, and entire Sense, has so much Natural Light in him, as that, with *necessary* Care, and due Consideration, he may rightly comprehend, at least those *general Precepts* and *Principles* which are requisite in order to pass our Lives here honestly and quietly; and be able to judge that these are congruous to the Nature of Man. For if this, at least, be not admitted within the Bounds of the *Forum Humanum*, [or Civil Judicature] Men might pretend an invincible Ignorance for all their Miscarriages; † because no Man *in foro humano* can be condemn'd for having violated a Law which it was above his Capacity to comprehend.

IV. *Human Understanding.* L. N. N. l. 1. c. 3.

* This is evident from the Example of the *Heathen*, and the Holy Scriptures are express in this Point; for thus they say: *For when the Gentiles, which have not the Law* (Written or Revealed, as was that of *Moses*) *do by NATURE the things contained in the Law, these having not the Law are a Law unto themselves: Which shew the Work of the Law written in their Hearts, their Conscience also bearing Witness, and their Thoughts the mean while accusing, or else excusing one another*; (that is, when they do ill, they condemn themselves in their own Conscience, and on the contrary, when they do well, they have in themselves an inward Approbation and Satisfaction: From whence it plainly appears they have Ideas of Good and Evil.) *Rom.* ii. 14, 15.

† *L. N. N. l.* 1. *c.* 3. § 3. *Apol.* § 21. *Erid. Scand. p.* 37.

V. *What is meant by* Conſcience rightly inform'd, *and what by* Probable Conſcience. *L. N. N. l. 1. c. 3. § 5.*

THE *Underſtanding* of Man, when it is *rightly inſtructed* concerning that which is to be done or omitted, and this ſo, as that he is able to give certain and undoubted Reaſons for his Opinions, is wont to be call'd CONSCIENCE RIGHTLY INFORM'D: That is, govern'd by ſure Principles, and ſettling its Reſolutions conformably to the Laws. But when a Man has indeed entertain'd the *true Opinion* about what is to be done or not to be done, the Truth whereof yet he is not able to make good by *Reaſoning*; but he either drew ſuch his Notion from his Education, way of Living, Cuſtom, or from the Authority of Perſons wiſer or better than himſelf; and no Reaſon appears to him that can perſuade the contrary, this uſes to be call'd *Conſcientia probabilis*, CONSCIENCE grounded upon PROBABILITY. And by this the greateſt part of Mankind are govern'd, it being the good Fortune of few to be able to enquire into, and to know, the Cauſes of Things.

VI. *Conſcience doubting.* L. N. N. l. 1. c. 3. § 8.

AND yet it chances often, to ſome Men eſpecially in ſingular Caſes, that Arguments may be brought on *both* ſides, and they not be Maſters of ſufficient *Judgment* to *diſcern* clearly which are the ſtrongeſt and moſt weighty. And this is call'd a * DOUBTING CONSCIENCE. In which Caſe this is the Rule: *As long as the Underſtand-*

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* A *ſcrupulous Conſcience*, proceeding moſtly from Weakneſs and Superſtition, is only to be help'd by better Information. Here our Author's Definition of *Conſcience* may be noted, that it is an Act of the Mind judging of what a Man has omitted or done, according to ſome *Rule* to which he was rightly oblig'd. Nay, in ſtrict Senſe, to *act* againſt *Conſcience* is no other than wittingly and willingly to do Evil.

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ing is unsatisfied and in doubt, whether the thing to be done be good or evil, the doing of it is to be deferr'd. For to set about doing it before the Doubt is answer'd, implies a sinful Design, or at least a Neglect of the Law.

MEN also oftentimes have *wrong Apprehensions* of the matter, and take that to be true which is false; and then they are said to be in an *Error*; and this is called *Vincible Error*, when a Man by applying due Attention and Diligence might have prevented his falling thereinto; and it's said to be *Invincible Error*, when the Person, with the utmost Diligence and Care that is consistent with the common Rules of Life, could not have avoided it. But this sort of *Error*, at least, among those who give their Minds to improve the Light of Reason, and to lead their Lives regularly, happens not in the *common Rules* of living, but only in *peculiar Matters*. For the Precepts of the Law of Nature are plain; and that Legislator who makes positive Laws, both does and ought to take all possible Care, that they may be understood by those who are to give Obedience to them. So that this Sort of *Error* proceeds only from a supine *Negligence*. But in *particular Affairs* 'tis easie for some Error to be admitted, against the Will, and without any Fault of the Person, concerning the Object and other * Circumstances of the Action.

VII. *Error, vincible and invincible.* L. N. N. l. 1. c 3. § 11.

WHERE

* Such Circumstances are the *Manner*, the *Intention*, the *Instrument*, the *Quality* of the Thing done, &c. Thus, for Example, A Man may happen to kill another without any Thought of doing so; he may mistake him for an Enemy, may give him Poison when he thinks what he

VIII. *Of Ignorance, and the various Kinds of it.* L. N. N. l. 1. c. 3. § 10.

WHERE Knowledge simply is wanting as to the Thing performed or omitted, such Defect of Knowledge is call'd *Ignorance.*

THIS *Ignorance* may be two Ways consider'd, either with respect to its *Origin*, or with respect to its *Influence on the Action.* With reference to this latter, *Ignorance* is of two Sorts, one being the Cause of the Thing ignorantly done, the other n[illegible] *Acti*[illegible] which account the first of these is call'd *Efficacious Ignorance*, the other *Concomitant.*

EFFICACIOUS Ignorance is the Want of such Knowledge as, had it not been wanting, would have hindred the Action: Such was *Abimelech*'s Ignorance, *Gen.* xx. 4, 5. who, had he known *Sarah* to have been *Abraham*'s Wife, had never entertain'd any Thoughts of taking her to himself. *Concomitant Ignorance* is the Want of such Knowledge, as had it not been wanting, would not have hindred the Fact: As suppose a Man should kill his Enemy by a chance Blow, whom he would otherwise have kill'd, had he known him to have been in that particular Place.

IGNORANCE with respect to its *Origin* is either *Voluntary* or *Involuntary. Voluntary Ignorance* is either *contracted* by mere negligence, idleness and unattention; or else *affected*, that is, proceeding from a direct and formal Contempt of the means of informing our selves in what we were able, and what it was our Duty to come to the knowledge of. *Involuntary Ignorance* consists in the want of knowing such Things, as it was neither in our Power, nor a part of our Duty to come to the knowledge of.

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he gives him is wholsom Liquor. Tho' we may believe Actions so circumstantiated to be innocent, yet no Man can innocently assert, that Murder or Poisoning are lawful.

This

This likewise is of two sorts: The former is, when in doing a Thing a Man is not able to overcome the Ignorance from which it proceeds, and yet is in Fault for falling into that Ignorance; which is the Case of Drunken Men. The latter is, when a Man is not only ignorant of such Things as could not be known before the Action, but is also * free from any Blame upon the account of his falling into that Ignorance, or his continuing in it.

IX. *The Will, unforced and free.* L. N. N. l. 1. c. 4.

THE other Faculty, which does peculiarly distinguish Men from Brutes, is called the *Will*; by which, as with an internal Impulse, Man *moves himself* to Action, and *chuses* that which best pleases him; and *rejects* that which seems unfit for him. Man therefore has thus much from his *Will*: First, that he has a Power to act *willingly*, that is, he is not determin'd by any intrinsick *Necessity* to do this or that, but is himself the Author of his own Actions: Next, that he has a Power to act *freely*, that is, upon the Proposal of one Object, he may *act* or not *act*, and either entertain or reject; or if divers Objects are propos'd, he may *chuse* one and *refuse* the rest. Now whereas among human Actions some are undertaken for their *own* Sakes, others because they are subservient to the ataining of somewhat *farther*; that is, some are as the *End*, and others as *Means*: As for the *End*, the Will is thus far concern'd, That being once known, this first *approves* it, and then moves

* There is no other but this last sort of Ignorance that is really involuntary and invincible, and capable entirely to excuse Men in doing any prejudicial Acts; for it is Men's own Faults that they fall into any of the forementioned sorts of Ignorance.

vigorouſly towards the *atchieving* thereof, as it were, driving at it with more or leſs earneſtneſs; and this *End* once *obtain'd*, it ſits down quietly and *enjoys* its Acquiſition with Pleaſure. For the *Means*, they are firſt to be approv'd, then ſuch as are moſt fit for the Purpoſe are *choſen*, and at laſt are *apply'd* to Uſe.

X. *The Will ſpontaneous chargeable with the Action.* L. N. N. l. 1. c. 4. § 2.

But as Man is accounted to be the *Author* of his own *Actions*, becauſe they are voluntarily undertaken by himſelf: So this is chiefly to be obſerv'd concerning the Will, to wit, that its *Spontaneity*, or natural Freedom, is at leaſt to be aſſerted in thoſe Actions, concerning which a Man is wont to give an Account before any human Tribunal. For *where* an abſolute *Freedom* of *choice* is wholly taken away, *there* not the Man who *acts*, but he that *impoſed* upon him the Neceſſity of ſo doing, is to be reputed the *Author* of that Action, to which the other unwillingly miniſtred with his Strength and Limbs.

XI. *The Will variouſly affected.* L. N. N. l. 1. c. 4. § 4.

Farthermore, though the Will do always deſire *Good* in general, and has continually an averſion for *Evil* alſo in general; yet a great *Variety* of *Deſires* and *Actions* may be found among Men. And this ariſes from hence, that all Things that are Good and Evil do not appear *purely* ſo to Man, but *mixt* together, the good with the bad, and the bad with the good; and becauſe different Objects do particularly affect divers Parts, as it were, of a Man; for inſtance, ſome regard that good Opinion and Reſpect that a Man has for himſelf; ſome affect the outward Senſes; and ſome that Love of himſelf, from which he deſires his own Preſervation. From whence it is, that thoſe of the firſt

first Sort appear to him as *honourable*; of the second as *pleasant*; and of the last as *profitable*: And accordingly as each of these have made a powerful Impression upon a Man, it brings upon him a peculiar Propensity towards that way; to which may be added the particular *Inclinations* and *Aversions* that are in most Men to some certain Things. From all which it comes to pass, that upon any Action several *Appearances* of *Good* and *Evil* offer themselves, which either *are* true or *appear so*; which some have more, some less Sagacity to *distinguish* with solidity of Judgment. So that 'tis no wonder that one Man should be carried eagerly on to that which another perfectly abhors.

But neither is the Will of Man always found to stand *equally* poised with regard to every Action, that so the Inclination thereof to this or that Side should come only from an *Internal Impulse*, after a due Consideration had of all its Circumstances; but it is very often push't on one way rather than another by *some outward Movements*. For, that we may pass by that universal Propensity to Evil, which is in all Mortals (the Original and Nature of which belong to the Examination of another * *Forum*;) first, a *peculiar Disposition of Nature* puts a particular kind of *byass* upon the Will, by which some are strongly inclin'd to certain *sorts* of Actions; and this is not only to be found in single *Men*, but in whole *Nations*. This seems to proceed from the Temperature of the Air that surrounds us, and of the Soil; and from that Constitution of our Bodies which either was deriv'd to us in the Seed of our *Parents*, or was occasion'd in us by our *Age*, *Diet*, the want or enjoyment of *Health*, the

XII. *The Will byass'd by Natural Inclinations* L. N. N. l. 1. c. 4. § 5.

* The Judgment of the Divines.

the Method of our Studies, or *way* of *Living*, and Causes of that sort; beside the various *formations* of the *Organs*, which the *Mind* makes use of in the Performance of its several Offices, and the like. And here, beside that a Man may with due Care very much *alter* the *Temperament* of his Body, and *repress* the Exorbitance of his natural *Inclination*, it is to be noted, that how much Power soever we attribute hereto, yet it is not to be understood to be of that Force as to hurry a Man into such a Violation of the *Law* of *Nature*, as shall render him obnoxious to the *Civil Judicature*, where evil *Desires* are not animadverted on, * provided they break not forth into external *Actions*. So that after all the Pains that can be taken to repel Nature, if it takes its full Swinge, yet it may so far be restrain'd as not to produce *open Acts* of Wickedness; and the *Difficulty* which happens in vanquishing these Propensities is abundantly recompens'd in the *Glory* of the Conquest. But if these Impulses are so strong upon the Mind, that they cannot be contain'd from breaking forth, yet there may be found a Way, as it were to draw them off, without Sin.

XIII. *By Custom or Habitude.* L. N. N. l. 1. c. 4. § 6.

THE frequent *Repetition* of Actions of the same kind does also *incline* the Will to do certain Things; and the Propensity which proceeds from hence is called *Habit* or *Custom*; for it is by this that any Thing is undertaken readily and willingly; so that the Object being presented, the Mind seems to be forced thither-

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* *Hugo Grotius de Jure Belli & Pacis, Lib.* II. c. 20. § 18.

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ward, or if it be absent, the same is earnestly desirous of it. Concerning which this is to be observ'd, That as there appears to be no *Custom*, but what a Man may, by applying a due Care, *break* and *leave off*; so neither can it so far put a force upon the Will, but that a Man may be able at any Time to restrain himself from any *external Acts* at least to which by that he is urged. And because it was in the Persons *own Power* to have contracted this *Habit* or not, whatsoever easiness it brings to any Action, yet if that Action be *good*, it loses nothing of its Value therefore, as neither doth an *evil* Thing abate ought of its Pravity. But as a *good Habit* brings *Praise* to a Man, so an *ill* one shews his *Shame*.

It is also of great Consideration, whether the Mind be in a *quiet* and *placid* State, or whether it be affected with those peculiar Motions we call the *Passions*. Of these it is to be known, that how violent soever they are, a Man with the right Use of his *Reason* may yet conquer them, or at least contain them so far within Bounds, as to hinder them from producing those Actions they prompt Men to do. * But whereas of the *Passions* some are rais'd from the Appearance of *Good*, and others of *Evil*; and do urge either to the procuring of somewhat that is *acceptable*, or to the avoiding of what is *mischievous*; it is agreeable to Human Nature, that *these* should meet among Men more *favour* and *pardon*, than *those*; and that according to such degrees as the Mischief that excited them was

XIV. *By Passion.* L. N. N. l. 1. c. 4. § 7.

* *Apolog. Sect.* 22. *in Erid. Scandic. p.* 39.

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more hurtful and intolerable. For to *want* a *Good* not altogether necessary to the Preservation of Nature is accounted more *easie*, than to *endure an Evil* which tends to Nature's Destruction.

XV. *By intoxication.* L. N. N. l. 1. c. 4. § 8.

FARTHERMORE, as there are * certain Maladies, which take away all Use of the Reason either perpetually or for a time: So 'tis customary in many Countries, for Men on purpose to procure to themselves a certain kind of *Disease* which goes off in a short time, but which very much confounds the Reasoning Faculty. By this we mean *Drunkenness*, proceeding from certain kinds of Drink, and Fumes, which hurry and disturb the Blood and Spirits, thereby rendring Men very prone to *Lust*, *Anger*, *Rashness* and immoderate *Mirth*; so that many by *Drunkenness* are set as it were beside themselves, and seem to have put on *another Nature*, than that which they were of, when *sober*. But as this does not always take away the *whole* Use of *Reason*; so, as far as the Person does *willingly* put himself in this State, it is apt to procure an *Abhorrence* rather than a *favourable Interpretation* of what is done by its Impulse.

XVI. *Actions Involuntary, mixt.* L. N. N. l. 1. c. 4. § 11.

NOW of Human Actions, as those are call'd *Voluntary*, which proceed from, and are directed by the Will; so if any thing be done *wittingly*, altogether against the Will, these are call'd *Involuntary*, taking the Word in the nar-

* The Effect of these sort of Maladies, and of *Drunkenness* is not, to speak properly, a giving to the Will a bent and inclination to this or that thing, so much as an entire destroying the Principle of Human Actions; because Men under these Circumstances know not any thing of what they do.

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rowest sense, for taking it in the largest, it comprehends even those which are done through *Ignorance.* But *Involuntary* in this place is to signifie the same as *forc'd*; that is, when by an external Power which is stronger, a Man is compell'd to use his Members in any Action, to which he yet signifies his Dissent and Aversion by Signs, and particularly by counterstriving with his Body. Less properly those Actions are also called *Involuntary*, which by the Imposition of a great Necessity are *chosen* to be done, as the lesser Evil; and for the Acting whereof the Person had the greatest Abomination, had he not been set under such Necessity. These Actions therefore are call'd *Mixt.* With *Voluntary Actions* they have this in common, that in the present State of Things the Will *chuses* them as the lesser Evil. With the *Involuntary* they are after a sort the same, as to the Effect, because they render the Agent either not at all, or not *so heinously* blameable, as if they had been done spontaneously.

Those Human Actions then which proceed from, and are directed by the *Understanding* and the *Will*, have particularly this natural Propriety, * that they may be *imputed* to the Doer; that is, that a Man may justly be said to be the Author of them, and be oblig'd to render an *Account* of such his Doing; and the *Consequences* thereof, whether good or bad, are chargeable upon him. For there can be no truer Reason why any Action should be *imputa-*

XVII. *Voluntary Actions imputable.* L. N. N. l. 1. c. 5. § 5.

* L. N. N. *l.* 1. *c.* 5. §. 3. *Spicileg. Jur. Nat.* §. 12. *in Erid. Scandic. Page* 343.

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ble to a Man, than that he did it either mediately or immediately *knowingly* and *willingly*; or that it was in his Power to have done the the same or to have let it alone. Hence it obtains as the prime Axiom in Matters of M which are liable to the Human *Forum*: *every Man is accountable for all such Actions, the Performance or Omission of which were in his own Choice.* Or, which is tantamount, That *every Action that lies within a Man's Power to perform or omit, is chargeable upon him who might or might not have done it.* So on the contrary, *no Man can be reputed the Author of that Action, which neither in it self nor in its cause, was in* his Power.

XVIII. *Conclusions from the Premisses.* FROM these Premisses we shall deduce some particular *Propositions*, by which shall be ascertain'd, what every Man ought to be *accountable* for; or, in other Words, which are those Actions and Consequences of which any one is to be charged as *Author*.

The first Conclusion. L. N. N. l. 1. c. 5. § 6. NONE *of those Actions which are done by another* Man, *nor any Operation of whatsoever other* things; *neither any* Accident, *can be imputable to any Person, but so far forth as it was in* his Power, *or as he was* obliged *to guide such Action.* For nothing is more common in the World, than to *subject* the Doings of *one Man* to the Manage and Direction of *another*. Here then, if any thing be perpetrated by one, which had not been done, if the other had performed his *Duty* and exerted his *Power*; this Action shall not only be chargeable upon him who *immediately* did the Fact, but upon the other also who *neglected* to make use of his *Authority* and *Power*. And yet this is to be understood with some restriction;

ſtriction; ſo as that *Poſſibility* may be taken *morally*, and in a *large* Senſe. For no *Subjection* can be ſo *ſtrict*, as to extinguiſh *all* manner of *Liberty* in the Perſon ſubjected; but ſo, that 'twill be in his Power to reſiſt and act quite contrary to the Direction of his *Superior*; neither will the State of *Human Nature* bear, that any one ſhould be perpetually affix'd to the ſide of another, ſo as to obſerve *all* his Motions. Therefore when a *Superiour* has done every thing that was requir'd by the *Rules* of his *Directorſhip*, and yet ſomewhat is acted amiſs, this ſhall be laid only to the charge of *him* that *did* it. Thus, whereas *Man* exerciſes Dominion over other *Animals*, what is done by them to the detriment of another, ſhall be charged upon the *Owner*, as ſuppoſing him to have been wanting of due *Care* and *Circumſpection*. So alſo all thoſe Miſchiefs which are brought upon another, may be *imputed* to that Perſon, who when he *could* and *ought*, yet did not take out of the way the Cauſe and Occaſion thereof. Accordingly it being in the Power of Men to *promote* or *ſuſpend* the Operations of many *Natural Agents*, whatſoever Advantage or Damage is wrought by theſe, *they* ſhall be accountable for, by whoſe *application* or *neglect* the ſame was occaſion'd. Beſide, ſometimes there are extraordinary Caſes, when a Man ſhall be charged with ſuch Events as are above human Direction, as when *God* ſhall do particular *Works* with regard to ſome *ſingle* Perſon. [So the Peſtilence in *Iſrael* may be charg'd upon *David* for numbring the People; 2 *Sam.* xxiv. or the three Year's Drought to the Prayers of *Elijah*, 1 *Kings* xvii. and the like.] Theſe and ſuch

such Cases being excepted, *Man is responsible but for his own Actions.*

XIX. *The second Conclusion. L. N. N. l. 1. c. 5. § 7.* *WHATSOEVER* Qualifications *a Man has or has not, which it is not in his* Power *to exert or not to exert, must not be* imputed *to him, unless so far as he is wanting in* Industry *to supply such natural Defect, or does not rouse up his native Faculties.* So, because no man can give himself an *Acuteness* of *Judgment* and *Strength* of *Body*; therefore no one is to be *blam'd* for Want of either, or *commended* for having them, except so far as he *improv'd*, or *neglected* the cultivating thereof. Thus *Clownishness* is not blameable in a Rustic, but in a *Courtier* or *Citizen.* And hence it is, that those Reproaches are to be judg'd extremely absurd, which are grounded upon Qualities, the Causes of which are not in our Power, as, *Short Stature*, a deform'd *Countenance*, and the like.

XX. *The Third Conclusion. L. N. N. l. 1. c. 5. § 10.* FARTHER, *We are not chargeable for those Things, which we do thro' Invincible Ignorance.* Because we have nothing but the Light of our Understanding to direct our Actions by; and in this case it is supposed that the Agent neither had, nor *possibly* could have, this Light for his Direction at that time, and that it was not his own Fault that made it not *possible* for him then to come at proper Knowledge. When we say not *possible* for him to know, we must be understood in a Moral not a Physical Sense; that is, it was not possible to come to this Knowledge by the usual and common Means, by using his best *Care* and *Attention*, and by giving such *Diligence, Precaution,* and *Circumspection*, as in all reason may be thought sufficient for the attaining such Knowledge.

Ignorance

Ignorance of a Man's *Duty*, or of thoſe *Laws* from whence his *Duty* ariſes, or *Error* about either of them, does not excuſe from blame. For whoſoever impoſes *Laws* and *Services*, is wont and ought to take care that the Subject have *notice* thereof. And theſe Laws and Rules of Duty generally are and ſhould be order'd to the *Capacity* of ſuch *Subject*, if they are ſuch as he is obliged to *know* and *remember*. Hence, he who is the *Cauſe* of the *Ignorance* ſhall be bound to anſwer for thoſe *Actions* which are the Effects thereof. XXI. *The fourth Concluſion.*

He who, not by his own fault, wants an *Opportunity* of doing his *Duty*, ſhall not be accountable, becauſe he has not done it. An *Opportunity* of doing our Duty comprehends theſe four requiſite Conditions: 1. That an *Object* of Action be ready: 2. That a proper *Place* be had, where we may not be hindred by others, nor receive any Miſchief: 3. That we have a fit *Time*, when Buſineſs of greater Neceſſity is not to be done, and which is equally ſeaſonable for thoſe Perſons who are to concur with us in the Action: and 4. Laſtly, That we have natural *Force ſufficient* for the performancer. For ſince an Action cannot be atchiev'd without theſe, 'twould be abſurd to blame a Man for not acting, when he had not an *Opportunity* ſo to do. Thus, a Phyſician cannot be accus'd of *Sloth*, when no body is ſick to employ him. Thus, no Man can be *liberal*, who wants himſelf. Thus he cannot be reprov'd for *burying* his Talent who having taken a due care to ſet himſelf in an uſeful Station, has yet miſs'd of it: tho' it be ſaid, * *To whom much is given, from* XXII. *The fifth Concluſion.*

* The Words of our Bleſſed Saviour, *Luc.* xii. 48.

him much shall be requir'd. * Thus we cannot blow and sup all at once.

XXIII. *The sixth Conclusion.* L. N. N. l. 1. c. 5. § 8.

-- *No Man is* accountable *for not doing that which* exceeded *his Power, and which he had not Strength sufficient to hinder or accomplish.* Hence that Maxim, *To Impossibilities there lies no Obligation.* But this Exception must be added, Provided, that by the Person's *own Fault he* has not *impaired*, or *lost* that Strength which was necessary to the Performance; for if so, he is to be treated after the same manner, as if he *had* all that Power which he *might* have had: Otherwise it would be easie to elude the Performance of any difficult Obligation, by weakening one's self on purpose.

XXIV. *The seventh Conclusion.* L. N. N. l. 1. c. 5. § 9.

Neither can those things be *imputable*, which one acts or suffers by *Compulsion.* For it is supposed, that 'twas above his *power* to decline or avoid such doing or suffering. But we are said after a twofold manner to be *compell'd*; one way is, when another that's stronger than us *violently forces* our Members to do or endure somewhat; the other, † when one more powerful shall *threaten* some grievous Mis-

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* Our Author, who frequently makes use of *Plautus*, does without doubt in this place allude to the *Mostellaria, Act.* 3. *Sc.* 2. *v.* 104, 105.

Simul flare sorberéque haud facile
Est : ego hic esse & illic simul haud potui.

† The Author seems here to give too great an Allowance to this second sort of *Compulsion.* It must indeed be owned, that it greatly lessens the Offence, especially in Courts of Human Judicature; but then it frees us not from Imputation intirely in the Sight of God. The Example our Author gives of the Sword or Ax reaches not the Case, for they are Instruments meerly passive : But

Mischief (which he is immediately able to bring upon us) unless we will, as of our *own* accord, apply our selves to the doing of this, or abstain from doing that. For in these cases unless we are *expresly obliged* to take the Mischief to our selves which was to be done to another, he that sets us under this *Necessity*, is to be reputed the *Author* of the Fact; and the same is no more chargeable upon us, than a *Murder* is upon the Sword or Ax which was the *Instrument*.

But on the other hand, a Person who is no other ways forced but by the Menaces of some great Mischief, without any physical or irresistible Violence, acts with some degree of Willingness, and gives a sort of a Concurrence to an Action which he plainly knows to be ill, when he is thus constrained to do it. There is but one Case wherein, with a safe Conscience, we may obey the injurious Orders of a Superior, in order to avoid the Mischiefs he menaces us with in case of a Refusal; and that is, when the Person, on whom the Mischief is to fall by our Compliance with the injurious Orders of a Superior, does himself consent that we should avoid the Mischief threatned to us, by doing the Action commanded, altho' it be injurious to him, and rather contents himself to suffer such Injury, than to expose us to the Violence of the Person menacing: But this also must be understood only of such Cases as the Person has it in his Power to give Consent, namely, when the Injury he consents to suffer is the Violation only of such a Right as is in the power of the suffering Person to quit; otherwise this Case holds not good; for should any one, for example, consent that I should act the Command of another to kill him, such consent would not acquit me of the Guilt of Murder, should I by the Menaces of any one be constrained to take away his Life. *See L. N. N. lib. I. cap. V. § 9. & lib. VIII. cap. I. § 6.*

XXV. *The eighth Conclusion.* THE Actions of those who *want* the Use of their *Reason* are not imputable; because they can not distinguish clearly what they do, and bring it to the Rule. Hitherto appertain the Actions of *Children,* before their reasoning Faculties begin to exert themselves. For though they are now and then chid or whipt for what they do; yet it is not from hence to be concluded, that their Actions are really Crimes, or that in strictness they deserve this punishment for them; which they receive not as from Justice, but in Prudence to prevent their growing troublesome to others, and lest they contract ill Habits in themselves when they are little, and so keep them when they are grown up. So also the Doings of *Franticks, Crack-brains,* and *Dotards* are not accounted *Human Actions,* nor *imputable* to those who contracted such incapacitating Disease, without any *fault* of their *own.*

XXVI. *The ninth Conclusion.* L. N. N. l. 1. c. 5 § 11. LASTLY, A Man is not chargeable with what he seems to do in his *Dreams*; unless by *indulging himself* in the *Day-time* with idle Thoughts, he has deeply impressed the *Ideas* of such Things in his Mind; (tho' Matters of this Sort can rarely be within the Cognizance of the Human *Forum.*) For indeed the Fansie in Sleep is like a Boat adrift without a Guide; so that 'tis impossible for any Man to order what Ideas it shall form.

XXVII. *Imputation of another's Actions.* L. N. N l. 1. c. 5. § 14. BUT concerning the *Imputation* of *another* Man's Actions, it is somewhat more distinctly to be observ'd, that sometimes it may so happen, that an Action ought not at all to be charged upon him that *immediately* did it, but upon another who made use of this only as an *Instru-*

Instrument. But it is more frequent, that it should be imputed *both* to *him* who perpetrated the thing, and to the *other*, who by doing or omitting something, shew'd his *concurrence* to the Action. And this is chiefly done after a threefold manner; either, 1. As the other was the *principal* Cause of the Action, and this *less principal.* Or, 2. As they were both *equally* concern'd. Or, 3. As the other was *less principal*, and he that did the Act was *principal.* To the first Sort belong those who shall *instigate* another to any thing by their Authority; those who shall give their necessary *Approbation*, without which the other could not have acted; those who *could* and *ought* to have hindred it, but did not. To the second Class appertain, those who *order* such a thing to be done, or *hire* a Man to do it; those who *assist*; those who afford *harbour* and *protection*; those who had it in their *Power*, and whose *Duty* it was to have succour'd the wronged Person, but refus'd it. To the third Sort are refer'd such as are of * *counsel* to the Design; † those that *encourage* and *commend* L. N. N. l. 1. c. 5. § 14.

* That is, when, for example, a Man advises another to steal this or that thing, shewing him at the same time the properest Manner to take it without discovery, the favourablest Time of conveying himself into the House where it is, the Place where the thing is reposited, the best Way of getting off with it, and the like Particulars; but this is not meant of simply advising any one in general terms to steal for his Support rather than starve. *L. N. N. lib.* I. *cap.* V. § 14.

† That is, provided this Advice, these Encouragements and Commendations contribute to make him do the criminal Act; for in such case only the Imputation lies; otherwise the Person thus counselling and encouraging is only

mend the Fact before it be done; and such as *incite* Men to sinning by their *Example*, and the like.

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only guilty of the ill Intention which he had. *Lib.* III. *cap.* I. § 4.

CHAP. II.

Of the RULE *of Human Actions, or of* LAWS *in general; and the different Qualifications of those Actions.*

I. *The Necessity of a Rule.* BECAUSE all *Human Actions* depending upon the *Will*, have their Estimate according to the concurrence thereof; but the *Will* of every Person not only differs in many respects from that of all others, but also alters and changes it self, becoming different in the same Person at one time from what it was before at another; therefore to preserve Decency and Order among Mankind, it was necessary there should be some *Rule*, by which they should be regulated. For otherwise, if, where there is so great a *Liberty* of the *Will*, and such *Variety* of *Inclinations* and *Desires*, any Man might do whatsoever he had a mind to, without any regard to some *stated Rule*, it could not but give occasion to vast *Confusions* among Mankind. (L. N. N. l. 2. c. 1.)

THIS

THIS *Rule* is call'd LAW; which is, * *A Decree by which the Superior obliges one that is subject to him, to accommodate his Actions to the Directions prescrib'd therein.* II. *Law, defined.* L. N. N. l. 1. c. 6. § 4.

THAT this Definition may the better be understood, it must first be enquired, What is an *Obligation*; *whence* is its Original; *who* is capable of *lying under* an Obligation; and *who* it is that can *impose* it. By *Obligation* then is usually meant, *A moral Bond, whereby we are ty'd down to do this or that, or to abstain from doing them.* That is, hereby a kind of a Moral Bridle is put upon our *Liberty*; so that though the *Will* does actually drive *another* way, yet we find our selves hereby struck as it were with an *internal* Sense, that if our Action be not perform'd according to the *prescript Rule*, we cannot but confess we have not done *right*; and if any Mischief happen to us upon that Account, we may fairly charge *our selves* with the same; because it might have been avoided, if the *Rule* had been follow'd as it ought. III. *Obligation.* L. N. N. l. 1 c. 6. § 5.

AND there are two Reasons why *Man* should be subject to an *Obligation*; one is, because he is endow'd with a *Will*, which may be divers ways *directed*, and so be *conform'd* to a Rule: the other, because *Man* is not exempt from the Power of a *Superior*. For where the *Faculties* of any Agent are by *Nature* form'd only for *one Way* of acting, there 'tis to no purpose to expect any thing to be done of *choice*: and to such a Creature 'tis *in vain* to prescribe IV. *Man capable of being obliged.* L. N. N. l. 1. c. 6. § 6.

* On this Head consult *H. Grotius de Jure Belli & Pacis*, l. 1. c. 1. § 9.

any *Rule*; because 'tis uncapable of *understanding* the same, or *conforming* its Actions thereto. Again, if there be any one who has no *Superior*, then there is no *Power* that can of right impose a Necessity upon him; and if he perpetually observes a certain Rule in what he does, and constantly abstains from doing many things, he is not to be understood to act thus from any *Obligation* that lies upon *him*, but from his own *good pleasure*. It will follow then, for any one to be capable of lying under Obligation, it is necessary, that on the one hand he have a *Superior*, and on the other, that he be both capable of understanding the Rule prescrib'd him by his Superior, and also endu'd with a *Wil* which may be *directed* several ways; and yet which (when the Law is promulged by his Superior) knows he cannot rightly depart therefrom. And with all these *Faculties*, 'tis plain, Mankind is furnish'd.

V. *Who can oblige.* L. N. N. l. 1. c. 6. § 9.

AN *Obligation* is superinduced upon the Will of Men properly by a *Superior*; that is, not only by such a one as being *greater* or *stronger*, can punish Gainsayers: but by him who has *just Reasons* to have a Power to restrain the Liberty of our Will at his own Pleasure. Now when any man has either of these, as soon as he has signify'd what he would have, it necessarily stirs up, in the Mind of the party concern'd, *Fear* mixt with *Reverence*; the first arises from the consideration of his Power, the other proceeds from those Reasons on which the Authority of our Superior is founded; by which we are convinced, that had we nothing to fear from him, yet we ought to conform our Actions to his Will. For he that can give me no *other*

other Reason for putting me under an Obligation against my Will, beside this, that he's too *strong* for me, he truly may so terrifie me, that I may think it better to *obey* him for a while than suffer a *greater Evil:* but when this *Fear* is over, nothing any longer hinders, but that I may act after my *own Choice* and *not his.* On the contrary, he that has nothing but *Arguments* to prove that I should obey him, but wants *Power* to do me any Mischief, if I deny: I may with Impunity slight his Commands, except one more potent take upon him to make good his despis'd Authority. Now the *Reasons* upon which one Man may *justly* exact *Subjection* from another, are two: First, if he have been to the other the *Original* of some extraordinary *Good*; and if it be plain, that he designs the others *Welfare*, and is *able* to provide better for him than 'tis possible for *himself* to do; and on the same Account does actually lay *claim* to the Government of him: Secondly, if any one does *voluntarily* surrender his Liberty to another, and subject *himself* to his Direction.

VI. *The Legislator and the true meaning of the Law to be known.* L. N. N. l. 1. c. 6. § 14.

FARTHERMORE, that a Law may exert its Force in the Minds of those to whom it is promulged, it is requir'd, that both the *Legislator and the Law also be known.* For no Man can pay Obedience, if he know not *whom* he is to *obey*, and *what* he is to *perform.* Now the Knowledge of the *Legislator* is very easy; because from the Light of Reason 'tis certain the *same* must be the *Author* of all the *Laws* of *Nature*, who was the *Creator* of the *Universe:* Nor can any Man in *Civil Society* be ignorant *who* it is that has Power over him. Then for

for the *Laws* of *Nature*, it ſhall be hereafter declar'd how we come to the Knowledge of them. And as to the *Laws* of a Man's *Country* or *City*, the Subject has notice given of them by a *Publication* plainly and openly made. In which theſe two Things ought to be aſcertain'd; that the *Author* of the Law is he, who hath the *ſupreme Authority* in the Community; and that *this* or *that* is the true Meaning of the *Law*. The *Firſt* of theſe is known, if he ſhall promulge the Law with his *own Mouth*, or deliver it under his *own Hand*; or elſe if the ſame be done by ſuch as are *delegated* to that purpoſe by him, whoſe Authority there is no Reaſon to call in queſtion, if it be manifeſt, that ſuch their acting belongs to that *Office* they bear in the Publick, and that they are *regularly placed* in the Adminiſtration thereof; if theſe Laws are brought in uſe at judicial Proceedings, and if they contain nothing *derogatory* to the *Sovereign*'s *Power*. That the *Latter*, that is, the the true *Senſe* of the *Law* may be known, it is the Duty of thoſe who promulge it, in ſo doing to uſe the greateſt *Perſpicuity* and *Plainneſs*; and if any thing *obſcure* do occur therein, an *Explanation* is to be ſought of the *Legiſlator*, or of thoſe who are *publickly conſtituted* to give judgment according to the Laws.

VII. *Two parts of a perfect Law.* L. N. N. l. 1. c. 6. § 14.

Of every *perfect Law* there are two Parts: One, [Precept] whereby it is directed *what* is to be *done* or *omitted*: the other, [the Sanction] wherein is declared what *Puniſhment* he ſhall incur, who *neglects* to do what is commanded, or *attempts* that which is prohibited. For as, through the Pravity of Human Nature ever inclining to things forbidden, it is to no purpoſe

pose to say, *Do this*, if no Punishment shall be undergone by him who disobeys; so it were *absurd* to say, *You shall be punish'd*, except some Cause preceeded, by which a Punishment was deserv'd. Thus then all the force of a Law consists in signifying what the *Superior requires* or *forbids* to be done, and what *Punishment* shall be inflicted upon the Violators. But the Power of *obliging*, that is, of imposing an intrinsick Necessity; and the Power of *forcing*, or, by the proposal of Punishments *compelling* the Observation of Laws, is properly in the Legislator, and in him to whom the Guardianship and Execution of the Laws is committed.

WHATSOEVER is enjoyn'd by any Law, ought not only to be in the *Power* of him to perform on whom the Injunction is laid, but it ought to contain somewhat *advantagious* either to him or others. For as it would be *absurd* and *cruel* to exact the doing of any thing from another, under a Penalty, which it is and always was beyond his *Power* to perform; so it would be silly and to *no purpose* to put a Restraint upon the natural Liberty of the Will of any man, if no one shall receive any Benefit therefrom. VIII. *It ought to command things possible and beneficial.*

BUT though a Law does strictly include *all* the *Subjects* of the Legislator who are *concern'd* in the Matter of the same, and whom the same Legislator at first *intended* not to be exempted: yet sometimes it happens that particular persons may be clear'd of any obligation to such Law; and this is call'd *Dispensing*. But as he *only* may dispense, in whose Power it is to make and *abrogate* the Law; * so great Care is IX. *Power of Dispensing.* L. N. N. l. 1. c. 6 § 17.

* See *Grotius de Jure Belli & Pacis*, L. 2. c. 20. *Sect.* 21. *&c.*

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to be taken, lest by too frequent Dispensations, and such as are granted without very weighty Reasons, the Authority of the Law be shaken, and occasion be given of Envy and Animosities among Subjects.

X. *Equity.* L. N. N. l. 5. c. 2. § 21. Yet there is a great Difference between *Equity* and *Dispensing* : *Equity* being *a Correction of that in which the Law, by reason of its General Comprehension, was deficient* ; or an *apt Interpretation* of the Law, by which it is demonstrated, that there may be some *peculiar* Case which is not compris'd in the *Universal Law*, because if it were, some Absurdity would follow. For it being impossible that *all Cases*, by Reason of their infinite *Variety*, should be either foreseen or explicitly provided for ; therefore the *Judges*, whose Office it is to apply the *general* Rules of the Laws to *special* Cases, ought to except such from the Influence of them, * as the *Lawgiver himself* would have excepted if he were *present*, or had *foreseen* such Cases.

XI. *Actions allowable, good and bad.* L. N. N. l. 1. c. 7. § 1. Now the Actions of Men obtain certain Qualities and Denominations from their relation to and agreement with the Law of Morality. And all those Actions, concerning which the Law has determin'd nothing on either side, are call'd *allowable*, [indifferent] or *permitted.* Here we may observe, that in Civil Life, where it is impossible to come to perfect Exactness in all points, even † those things are said

* See *Grotius de Jure Belli & Pacis*, L. 2. c. 20. *Sect.* 26, 27.

† See *Grotius de Jure Belli & Pacis*, *Lib.* 3. *cap.* 4. § 2.

to

to be *allowable*, upon which the Law has not assign'd some *Punishment*, though they are in themselves repugnant to *Natural Honesty*. We call those Actions which are *consonant* to the Law *good*, and those that are *contrary* to it *bad*. But that any Action should be *good*, 'tis requisite, that it be exactly agreeable in every * point to the Law; whereas it may be *evil* if it be deficient in one Point only.

As for *Justice*, it is sometimes the Attribute of *Actions*, sometimes of *Persons*. When it is attributed to *Persons*, 'tis usually defin'd to be, A constant and perpetual *Desire* of giving every one their own. For he is called a *just* Man, who is delighted in doing righteous Things, who studies Justice, and in all his Actions endeavours to do that which is right. On the other side, the *unjust* Man is he that neglects the giving every Man his own, or, if he does,

XII. *Justice of Persons.* L. N. N. l. 1. c. 7. § 6.

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* The Points here spoken of mean the *Quality*, or the *Intention of the Agent*; *the Object*, *the End* pursued thereby, and other like Circumstances of the Action. Thus, though an Action may in every respect answer the Direction of the Law, it may be nevertheless charged on the Doer as a bad Action, especially in the Sight of God, not only when it was done upon an ill Principle with a vitious Intention, but also when it was done through Ignorance, or on some other Motive different from what the Law prescribes. I say it may be accounted a bad Action *in the Sight of God*; for the outward Obedience of the Laws sufficiently answering the Ends of Civil Society, which is the Aim only of Politick Legislators, they never concern themselves with the Intention of the Agent, whether it be just or unjust, provided the External Act has nothing in it but what is conformable to the Law. *See L. N. N. L.* I, *Cap.* VII. § 3, 4. *and Lib.* I, *Cap.* VIII. § 2, 3.

'tis

'tis not because 'tis due, but from expectation of Advantage to himself. So that a *just Man* may sometimes do unjust Things, and an *unjust Man* that which is just. But the *Just* does that which is right, because he is so *commanded* by the Law; and never commits any unjust Acts but only through *Infirmity*; whereas the *wicked Man* does a just Thing for fear of the *Punishment* which is the Sanction of the Command, but such unjust Acts as he commits proceed from the *Naughtiness* of his *Heart.*

XIII. *Of Actions.* L. N. N. l. 1. c. 7. § 7. But the *Justice of Actions* not only consists in their due Conformity to Law, but it includes in it likewise a right Application of them to those Persons to whom the Action is perform'd: So that we apprehend that *Action* to be *just*, which, with full Design and Intention, is apply'd to the Person to whom it is due. Herein therefore the *Justice* of Actions differs from their *Goodness* chiefly, that the latter simply denotes an Agreement with the Law; whereas *Justice* also includes the Regard they have to those * *Persons* upon whom

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* Good Actions might have been more properly distinguished with respect to the three Objects they may have; which are, GOD, *our Neighbour*, and *our selves*. (see § 13. of the following Chapter.) Such good Actions, as have GOD for their Object, are comprehended under the general Name of *PIETY*. Such good Actions as have for their Object *other Men*, are signify'd by the Name of *JUSTICE*. And those good Actions which have only a direct respect to *our selves*, may be contain'd in the Term *Moderation*, or *TEMPERANCE*. This Division of good Actions being the most Simple and Natural one, is also the most Ancient one. *See L. N. N. Lib*, II. *Cap.* III. § 24.

they

they are exercised. Upon which Account Justice is call'd a *Relative Virtue*.

MEN do not generally agree about the Division of *Justice*. The most receiv'd Distinction is, into *Universal* and *Particular*. The first is, when *every Duty* is practised and *all right* done to others, * even that which could not have been extorted by Force, or by the Rigor of Law. The latter is, when *that Justice* only is done a Man, which in his own right he could have *demanded*; and this is wont to be again divided into † *Distributive* and *Commutative* XIV. *Division of Justice.* L. N. N. l. 1. c. 7. § 8.

* The Duties here meant, by *such as could not have been extorted by Force or Law*, are such as are not absolutely necessary for the Preservation of Mankind, and for the Support of Human Society in general, although they serve to embellish it, and render it more commodious. Such are the Duties of *Compassion*, *Liberality*, *Beneficence*, *Gratitude*, *Hospitality*, and in one word all that is contain'd under that comprehensive Name of *Charity*, or *Humanity*, as it is oppos'd to rigorous *Justice* properly so call'd, the Duties of which, generally speaking, have their Foundation in Agreement. I say *generally speaking*; for tho' there be no Agreement made, we lie under an indispensible Obligation to do wrong to no one, to make good the Damage any one has sustain'd by us, to look upon each other as Equals by Nature, &c. But here we ought to observe, that in case of extream Necessity, the *Imperfect Right* that others have to these Duties of Charity from us, becomes a *Perfect Right*; so that Men may by force be obliged to the performance of these Duties at such a time, tho' on all other Occasions the Performance of them must be left to every Man's Conscience and Honour. *See L. N. N. lib. 1. cap. 7. § 7. lib. 3. cap. 4. § 6.*

† This Division is not compleat, because it comprehends no other Duties but what Men are oblig'd to the performance of towards others, by virtue of an Engagement

tive. The *Distributive* takes place in Contracts made between Partners in Fellowship, concerning fair Partition of Loss and Gain according to a rate. † The *Commutative* is mostly in Bargains made upon even hand about Things and Doings relating to Traffick and Dealing.

XV. *Injustice what.* *L. N. N.* l. 1. c. 7. § 14. KNOWING thus, what *Justice* is, 'tis easie to collect what is *Injustice.* Where it is to be observ'd, that such an unjust Action is call'd *Wrong-doing*, which is premeditately undertaken, and by which a Violence is done upon somewhat which of absolute Right was another Man's due, or, which by like Right he one way or other stood possess'd of. And this Wrong may be done after a threefold Manner: 1. If that be deny'd to another which in his own right he might demand (not accounting that which from Courtesie or the like Virtue may be another's due): Or, 2. If that be taken away from another, of which by the same right, then valid against the Invader, he was

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ment enter'd into to that purpose; but there are Duties that our Neighbour may in strict justice demand at our hands, independently on all such Engagement or Agreement. *See the preceeding Note.* I should rather approve of Mr. *Budæus*'s Division of this *Particular*, or *Strict Justice* (*Elem. Pract. Phil. par.* II. *Cap.* II. § 46.) into Justice as it is exercised between *Equals and Equals*, and as it is exercised between *Superiors and Inferiors.* The Former of these is subdivided into as many different Sorts as there are Duties, which one Man may demand in strictness the performance of from every other Man, consider'd as such, and one Citizen from every other Member of the same Body. The Latter of these comprehends as many different Sorts as there are kinds of Societies wherein some command and others obey.

† See *Grotius de Jure Belli & Pacis, l.* 1. *c.* 1. § 8.

in full possession: Or, 3. If any Damage be done to another, which we had not Authority to do to him. Beside which, that a Man may be charged with *Injustice*, it is requisite that there be a naughty *Mind* and an evil *Design* in him that acts it. For if there be nothing of these in it, then 'tis only call'd *Misfortune*, or an *Error*; and that is so much slighter or more grievous, as the Sloth and Negligence which occasion'd it was greater or less.

XVI. **Laws distinguisht. Natural and Positive.** L. N. N. l. 1. c. 6. § 18.

LAWS with respect to their Authors, are distinguished into *Divine* and *Humane*; *that* proceeds from *God*, and *this* from *Men*. But if Laws be considered, as they have a necessary and universal Congruity with Mankind, they are then distinguisht into *Natural* and *Positive*. * *Natural Law is that which is so agreeable with the* rational *and* sociable *Nature of Man, that* honest *and* peaceable Society *could not be kept up amongst Mankind without it*, Hence it is, that *this* may be sought out, and the knowledge of it acquired by the light of that *Reason*, which is born with every Man, and by a consideration of *Human Nature* in general. *Positive Law* is *that which takes not its rise from the common condition of* Human Nature, *but only from the good pleasure of the* Legislator: This likewise ought to have its Foundation in *Reason*, and its End ought to be some *Advantage* to those Men, or that Society, for which it is designed. Now the Law *Divine*, is either *Natural* or *Positive*; but all *Human Laws*, strictly taken, are *Positive*.

* See *Grotius de Jure Belli & Pacis*, *Lib.* I. *Cap.* I. § 10.

CHAP. III.

Of the Law of Nature in general.

I. *Law Natural obvious.* L. N. N. l. 2. c. 3. THAT Man, who has throughly examined the *Nature* and *Disposition* of Mankind, may plainly understand what the *Law Natural* is, the *Necessity* thereof, and which are the *Precepts* it proposes and enjoyns to Mankind. For, as it much conduces to him who would know exactly the *Polity* of any *Community*, that he first well understand the *Condition* thereof, and the *Manners* and *Humours* of the Members who constitute it: So to him who has well studied the common *Nature* and *Condition* of *Man*, it will be easie to discover those *Laws* which are necessary for the Safety and common Benefit of Mankind.

II. *Self Preservation.* THIS then Man has in common with all the *Animals*, who have a Sense of their own Beings; that he accounts nothing dearer than *Himself*; that he studies all manner of ways *his own Preservation*; and that he endeavours to *procure* to himself such things as seem *good* for him, and to *avoid* and *keep off* those that are *mischievous*. And this Desire of *Self-Preservation* regularly is so strong, that all our other *Appetites and Passions* give way to it. So that whensoever an *Attempt* is made upon the Life of any man, though he escape the danger threatned, yet he usually resents it so, as to retain a *Hatred* still, and a desire of *Revenge* on the Aggressor.

BUT

III. *Society absolutely necessary.* L. N. N. l. 2. c. 1. § 8.

But, in one particular, *Man* seems to be set in a *worse* condition than that of *Brutes*, that hardly any other Animal comes into the world in so great *weakness*; so that 'twould be a kind of Miracle, if any man should arrive at a mature Age, without the *aid* of some body *else*. For even now, after so many helps found out for the *Necessities* of *Human Life*; yet a many Years *careful Study* is required before a Man shall be able of himself to get *Food* and *Raiment*. * Let us suppose a Man come to his full Strengrh without any *oversight* or *instruction* from *other* Men; suppose him to have no manner of *Knowledge* but what springs of it self from his *own natural Wit*; and thus to be placed in some *Solitude*, destitute of any *Help* or *Society* of all Mankind beside. Certainly a more miserable Creature cannot be imagined. He is no better than *dumb*, *naked*, and has nothing left him but *Herbs* and *Roots* to pluck, and the *wild Fruits* to gather; to quench his thirst at the next *Spring*, *River*, or *Ditch*; and to shelter himself from the Injuries of the Weather, by creeping into some *Cave*, or covering himself after any sort with *Moss* or *Grass*; to pass away his tedious life in *Idleness*; to start at every Noise, and be afraid at the sight of any *other* Animal; in a Word, at last to perish either by *Hunger*, or *Cold*, or some

* *L. N. N. l.* II. *c.* 1. § 8. *c.* 2. § 2. *Dissert. Acad. ult. p.* 458. *Eris. Scandic. in Apol. p.* 20. *seq Specim. Controv. c.* 3. *p.* 217. *c.* 4. § 161. *p.* 258. *Spicileg. Controv. c.* 3. § 1. *p.* 379. *Jul. Rondin. Dissert. Epist.* § 1. *seq. p.* 396, *Comment. super invenusto Ven. Lipsiens. pull. p.* 11, 16, 36, 44, 46, 52, 54.

wild *Beaſt*. It muſt then follow, that whatſoever Advantages accompany Human Life, are all owing to that *mutual Help* Men afford one another. So that, next to *Divine Providence*, there is nothing in the world more *beneficial* to Mankind than *Men themſelves*.

IV. *Men to Men inclinable to do hurt.* L. N. N. l. 2. c. 1. § 6 l. 7. c. 1. § 4.

AND yet, as *uſeful* as this Creature is, or may be, to others of its kind, it has many Faults, and is capable of being *equally noxious*; which renders mutual Society between Man and Man not a little dangerous, and makes *great Caution* neceſſary to be uſed therein, leſt Miſchief accrue from it inſtead of *Good*. In the firſt place, a ſtronger *Proclivity* to injure another is obſerv'd to be generally in *Man*, than in any of the *Brutes*; for they ſeldom grow outragious, but through *Hunger* or *Luſt*, both which Appetites are ſatisfi'd without much Pains; and that done, they are not apt to grow furious, or to hurt their Fellow-Creatures, without ſome *Provocation*. Whereas Man is an Animal always *prone* to *Luſt*, by which he is much more frequently inſtigated, than ſeems to be neceſſary to the Conſervation of his Kind. His *Stomach* alſo is not only to be *ſatisfied*, but to be *pleaſed*; and it often deſires more than Nature can well digeſt. As for *Raiment*, Nature has taken Care of the *reſt* of the Creatures that they don't *want* any: But *Men* require not only ſuch as will anſwer their *Neceſſity*, but their *Pride* and *Oſtentation*. Beſide theſe, there are many *Paſſions* and *Appetites* unknown to the *Brutes*, which are yet to be found in *Mankind*; as, an unreaſonable *Deſire* of poſſeſſing much *more* than is *neceſſary*, an earneſt purſuit after *Glory* and *Pre-eminence*; *Envy*, *Emulation*, and

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Outvyings of Wit. A Proof hereof is, that most of the Wars with which *Mankind* is harrass'd, are rais'd for Causes altogether unknown to the *Brutes*. Now all these are able to provoke *Men* to hurt one another, and they frequently do so: Hereto may be added the great *Arrogance* that is in many Men, and *Desire* of *insulting* over others, which cannot but exasperate even those, who are naturally meek enough; and from a Care of preserving themselves and their Liberty, excite them to make Resistance. Sometimes also *Want* sets Men together by the Ears, or because that Store of Necessaries which they have at *present* seems not *sufficient* for their *Needs* or *Appetites*.

MOREOVER, Men are more *able* to do one another Harm than *Brutes* are. For tho' they don't look formidable with *Teeth*, *Claws*, or *Horns*, as many of *them* do; yet the *Activity* of their *Hands* renders them very effectual Instruments of Mischief; and then the Quickness of their *Wit* gives them *Craft*, and a Capacity of attempting that by Treachery which cannot be done by open Force. So that 'tis very *easie* for one Man to bring upon another the *greatest* of all *Natural Evils*, to wit, *Death* itself. V. *And very capable of it.*

BESIDE all this, it is to be consider'd, that among *Men* there is a vast *Diversity* of *Dispositions*, which is not to be found among *Brutes*; for among Brutes, all of the same Kind have the *like Inclinations*, and are led by the *same* inward *Motions* and *Appetites*: Whereas among *Men*, there are so many *Minds* as there are *Heads*, and every one has his *singular* Opinion; nor are they all acted with *simple* and *uniform* Desires, but with such as are *manifold* and *variously mixt* VI. *And likely so to do.* L. N. N. l. 2. c. 1. § 7.

 together.

together. Nay, *one* and the *ſame* Man ſhall be often ſeen to *differ* from *himſelf*, and to *deſire* that at *one* Time which at *another* he extremely *abhorred*. Nor is the Variety leſs diſcernable, which is now to be found in the almoſt *infinite Ways* of living, of directing our Studies, or Courſe of Life, and our Methods of making uſe of our Wits. Now, that by Occaſion hereof Men may not daſh againſt one another, there is need of wiſe *Limitations* and careful *Management*.

VII. *The Sum of the foregoing Paragraphs.* So then Man is an Animal very deſirous of his own *Preſervation*; of *himſelf* liable to many *Wants*; *unable* to Support himſelf without the Help of *other* of his Kind; and yet wonderfully fit in *Society* to promote a *common Good*: But then he is *malicious*, *inſolent*, and eaſily *provok'd*, and not leſs *prone* to do Miſchief to his Fellow than he is *capable* of effecting it. Whence this muſt be inferr'd, that in order to his Preſervation, 'tis abſolutely neceſſary, that he be *ſociable*, that is, that he *join* with thoſe of his Kind, and that he ſo *behave* himſelf towards them, that they may have no juſtifiable Cauſe to do him *Harm*, but rather to *promote* and *ſecure* to him all his Intereſts.

VIII. *Law Natural defin'd.* THE Rules then of this Fellowſhip, which are the Laws of *Human Society*, whereby Men are directed how to render themſelves uſeful Members thereof, and without which it falls to pieces, are called the *Laws of Nature*.

IX. *The Means deſign'd* FROM What has been ſaid, it appears, that this is a *fundamental Law of Nature*, That EVERY MAN OUGHT, AS MUCH AS IN HIM LIES, TO PRESERVE AND PROMOTE SOCIE-

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TY: That is, the *Welfare of Mankind.* * And since he that designs the *End*, cannot but be supposed to design those *Means* without which the *End* cannot be obtain'd, it follows that all such Actions as tend generally and are absolutely necessary to the Preservation of this *Society*, are *commanded* by the *Law of Nature*; as, on the contrary, those that disturb and dissolve it are forbidden by the same. All other Precepts are to be accounted only *Subsumptions*, or *Consequences* upon this Universal Law, the Evidence whereof is made out by that Natural Light which is engrafted in Mankind. *where the End is so.* L. N. N. l. 2. c. 3. § 15.

Now though these *Rules* do plainly contain in themselves that which is for the general *Good*; yet that the same may obtain the Force of *Laws*, it must necessarily be presuppos'd, that there is a GOD, who governs all Things by his Providence, and that He has enjoyn'd us Mortals, to observe these *Dictates* of our Reason as *Laws*, promulged by him to us by the powerful Mediation of that Light which is born with us. Otherwise we might perhaps pay some obedience to them in contemplation of their *Utility*; so as we observe the Directions of Physicians in regard to our Health, † but not as *Laws*, to X. *A God and Providence.* L. N. N. l. 2. c. 3. § 19.

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* See *Grotius de Jure Belli & Pacis in Prolegomenis passim.* L N. N l. 2. c. 3. § 14. *seq. Element. Jurispr. univ*e*rsal. l. 2. observ* 14. *Eris. Scandic. Apol. p.* 46, 75. *Specim. Controvers. c.* 4. *p.* 231. *sequ. Spicileg. Jur. Nat. c.* 1. § 14. *p.* 348. *seq. c.* 2. § 8. *p* 366. *c.* 3. § 13. *p.* 389. *seq. Venet. Lipsiens. pull. p* 11. *& passim.*

† *Grotius de Jure Belli & Pacis, Lib.* 1. *Cap.* 1. § 10.

the Constitution of which a *Superior* is necessary to be supposed, and *that* such a one as has actually undertaken the Government of the other.

XI. *God the Author of the Law of Nature.* L. N. N. l. 2. c. 3. § 20.

But, that God is the Author of the *Law of Nature*, is thus demonstrated (considering Mankind only in its *present* State, without enquiring whether the *first* Condition of us Mortals was *different* from this, nor *how* the Change was wrought.) Whereas our Nature is so framed, that Mankind cannot be preserv'd without a *sociable Life*, and whereas it is plain that the *Mind of Man* is capable of all those Notions which are *subservient* to this purpose; and it is also manifest, that Men not only, like the other Creatures, owe their *Original* to God, but that He *governs* them, (let their Condition be as it will) by the Wisdom of his *Providence*. Hence it follows, that it must be supposed to be the *Will of God*, that Man should make use of those Faculties with which he is peculiarly endow'd beyond the Brutes, to the *Preservation* of his own Nature: and consequently, that the Life of Man should be different from the lawless Life of the *Irrational Creatures*. And since this cannot otherwise be atchiev'd, but by an Observance of the *Law Natural*, it must be understood, that there is from God an obligation laid upon Man to pay Obedience hereto, as a Means not *invented* by the Wit, or *imposed* by the Will of Men, nor capable of being *changed* by their Humours and Inclinations; but *expressly* ordain'd by God himself in order to the *accomplishing* this End. For he that obliges us to pursue such an *End*, must be thought to oblige us to make use of

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those *Means* which are necessary to the attainment thereof. And that the *Social Life* is positively enjoyn'd by God upon *Men*, this is a Proof, that in no other *Animal* is to be found any Sense of *Religion* or Fear of a *Deity*, which seems not so much as to fall within the Understanding of the ungovernable Brute; and yet it has the power to excite in the minds of *Men*, not altogether profligate, the tenderest Sense; by which they are convinced, that by sinning against this *Law Natural*, they offend him who is Lord of the Soul of Man, and who is to be fear'd, even where we are secure of any Punishment from our Fellow-Creatures.

XII. *This Law how written in Man's Heart.*

THOUGH it be usually said, that we have the Knowledge of this Law from *Nature* it self, yet this is not so to be taken, as if there were implanted in the Minds of Men just *new born*, plain and distinct Notions concerning what is to be *done* or *avoided*. But Nature is said thus to teach us, * partly because the Knowledge of this Law may be attain'd by the help of the *Light* of *Reason*; and partly because the general and most useful Points thereof are so *plain* and *clear*, that they at first sight force the Assent, and get such root in the minds of Men, that nothing can eradicate them afterwards; let wicked Men take never so much pains to blunt the edge and stupifie themselves against the Stings of their *Consciences*. And in this Sense we find in Holy Scripture, that this Law is said to be *written in the hearts of Men*. So that having *Rom.* ii. 15.

* *L. N. N. lib* 2. *c.* 3. § 13. *seq. Eris. Scandic. Apol.* § 24 *p.* 40. *Epist. ad Amicos.*

from

from our Childhood had a Senſe hereof inſtill'd into us, together with other Learning in the uſual Methods of Education, and yet not being able to remember the *punctual time* when firſt they took hold of our Underſtanding and poſſeſs'd our Minds; we can have no other opinion of our knowledge of this Law; but that it was *connate* to our Beings, or born *together* and at the *ſame time* with our ſelves. The Caſe being the ſame with every Man in learning his *Mother Tongue.*

XIII. *Diviſion of Natural Duties.* L. N. N. l. 2. c. 3. § 24. THOSE *Duties,* which from the Law of Nature are incumbent upon Man, ſeem moſt aptly to be *divided* according to the *Objects* about which they are converſant. With regard to which they are ranged under three principal Heads; the *firſt* of which gives us Directions how by the ſingle Dictates of right Reaſon Man ought to behave himſelf towards *God*; the *ſecond* contains our Duty towards *our ſelevs*; and the *third* that towards *other Men.* But though thoſe Precepts of the Law Natural, which have a relation to *othor Men,* may primarily and directly be derived from that *Sociality,* which we have laid down as a Foundation; yet even the Duties alſo of Man towards *God* may be * indirectly deduc'd from

* But theſe Duties, as well as thoſe which regard our ſelves, have another more immediate and direct Foundation, which makes part of the general Principles of the Law of Nature. For it is not neceſſary that all thoſe Duties, the Neceſſity and Reaſonableneſs of which may be collected from the Light of Reaſon only, ſhould be deduced from this one Fundamental Maxim. It may more juſtly be ſaid, that there are three grand Principles of

from thence, upon this Account, that the ſtrongeſt Obligation to mutual Duties between Man and Man ariſes from *Religion* and a Fear of the *Deity*; ſo as that Man could not become a *ſociable* Creature if he were not imbu'd with *Religion*; and becauſe *Reaſon* alone can go no farther in *Religion* than as it is uſeful to promote the common Tranquillity and Sociality or reciprocal Union in this Life: For ſo far forth as Religion procures the Salvation of Souls, it proceeds from peculiar Divine Revelation. But the Duties a man owes to *Himſelf* ariſe jointly from *Religion*, and from the Neceſſity of *Society*. So that no Man is ſo Lord of himſelf, but that there are many things relating to *himſelf*, which are not to be diſpoſed altogether according to his Will; partly becauſe of the Obligation he lies under of being a religious Adorer of the *Deity*, and partly that he may keep himſelf an uſeful and beneficial Member of *Society*.

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of Natural Right, that is, *RELIGION*, which comprehends all the Duties of Man towards God; the *LOVE OF OUR SELVES*, which contains all thoſe Duties which we are bound to do, with reſpect only and directly to our ſelves; and *SOCIABILITY*, from whence reſults all that is due from us to our Neighbour. Theſe are fruitful Principles, which, tho' they have a great Affinity and Reſpect to each other, are yet very different at the bottom, and ought wiſely to be conſidered and regarded, ſo that an equal and juſt Balance may, as much as poſſible, be preſerv'd between them. See *L. N. N. lib.* 2. *cap.* 3. § 15.

CHAP. IV.

Of the Duty of Man towards GOD, *or, concerning Natural Religion.*

I. *Natural Religion, its Parts.* THE Duty of Man towards GOD, so far as can be discover'd by Natural Reason, is comprehended in these two; that we have *true* Notions concerning him, or *know* him aright; and then that we conform all our Actions to his Will, or *obey* him as we ought. And hence Natural Religion consists of two sorts of Propositions, to wit, * *Theoretical* or Speculative, and *Practical* or Active.

II. *That God is.* L. N. N. l. 2. c. 4. § 3. AMONGST those *Notions* that every Man ought to have of GOD, the *first* of all is, that he firmly believe his *Existence*, that is, that there *is* indeed some *supreme* and *first Being*, upon whom this Universe depends. And this has been most plainly demonstrated by learned and wise Men from the *Subordination* of *Causes* to one another, which must at last be found to have their Original in somewhat that was before them all; from the necessity of having a *first Mover*; from the Consideration of this great *Machin*, the World, and from the like Arguments. Which if any Man denies him-

* See Monf. *Le Clerc*'s *Pneumatologia*, § 3. and Monf. *Budæus*'s Discourse, *de Pietate Philosophica*, being the fourth Discourse in his *Selecta Jura Naturæ & Gentium.*

self

ſelf to be able to *comprehend*, he is not therefore to be excus'd for his Atheiſm. For all Mankind having been perpetually, as it were, poſſeſt of this Perſuaſion, that Man who undertakes to oppoſe it, ought not only ſolidly to *confute* all thoſe Arguments that are brought to *prove* a God, but ſhould advance *Reaſons* for his own Aſſertion, which may be *more plauſible* than thoſe. And ſince by this Belief of the *Deity* the Weal of Mankind may be ſuppoſed to have been *hitherto* preſerv'd, he ought to ſhew that Atheiſm would *better* anſwer that End than ſober Religion and the Worſhip of God. Now ſeeing this can by no means be done, the Wickedneſs of thoſe Men who attempt any way to eradicate this Perſuaſion out of the Minds of Men, is to be above all things abominated, and reſtrain'd by the ſevereſt Puniſhments.

III. *God the Creator of the World.* L. N. N. l. 3. c. 4. § 4.

THE Second is, that *God is the Creator of this Univerſe.* For it being manifeſt from Reaſon, that none of theſe Things could exiſt of *themſelves*, it is abſolutely neceſſary that they ſhould have ſome ſupreme *Cauſe*; which *Cauſe* is the very ſame that we call GOD,

AND hence it follows, that thoſe Men are cheated, who every now and then are putting upon us **Nature**, forſooth, as the original Cauſe of all Things and Effects. For, if by that Word they mean that *Energy* and *Power of Acting* which we find in every Thing, this is ſo far from being of any force to prove there is *no God*, that it proves him to be the *Author* of *Nature it ſelf*. But if by *Nature* they would have us underſtand the *Supreme Cauſe* of all Things, this is only out of a profane Nicety

to

to avoid the receiv'd and plain Appellation of God.

Those also are in a great Error, who believe that any thing can be God, which is the Object of our *Senses*, and particularly the *Stars*, among the rest. For the *Substance* of these argues them all to derive their Beings from somewhat else, and not to be the *first* Things in Nature.

Nor do they think less unworthily of *God*, who call him the * *Soul of the World*. For the Soul of the World, let them conceive of it as they please, must signifie a *Part* of the World; and how can a *Part* of a Thing be the *Cause* of it, that is, be something *before* it self? But if by the *Soul* of the World, they mean that *first* and *invisible Being*, from which all Things receive their Vigour, Life, and Motion, they only obtrude upon us an *obscure* and *figurative* Expression for one that is *plain* and *obvious*. From hence also it appears, that the *World* did not exist from *all Eternity*; this being contrary to the Nature of that which has a *Cause*. And he that asserts, that the *World is Eternal*, denies that it had any *Cause* of its being, and consequently denies *God* himself.

IV. *God governs the World.*

The Third is, that God *governs the whole World*, and particularly *Mankind*; which plainly appears from the admirable and constant *Order* which is to be seen in this Universe; and 'tis to the same *moral* Purpose whether a

* See the Continuation of *various Thoughts about Comets, &c.* by Mr. *Bayle*.

Man

Man deny that GOD *is*, or that he *rules* and *regards the Affairs of Men*; since either of them destroy all Manner of Religion. For let him be never so *excellent* in himself, 'tis in vain to fear or worship him, if he be altogerher regardless of us, and neither *will* nor *can* do us either Good or Hurt.

THE Fourth is, that *no Attribute can belong to God, which implies any manner of Imperfection.* For it would be absurd, (He being the *Cause* and *Source* of all Things) for any Creature of his to think it self able to form a notion of any *Perfection*, of which he is not fully possest. Nay, His *Perfection* infinitely surmounting the Capacity of so mean a Creature, it is most reasonable to express the same in *negative* rather than in *positive* Terms. Hence nothing is to be attributed to God that is *finite* or *determinate*; because what is *finite* has always somewhat that is *greater* than it self: And whatsoever is *determinate*, or subject to *Figure* and *Form*, must suppose *Bounds* and *Circumscription*: Neither can He be said to be *distinctly* and *fully comprehended* or conceiv'd in our Imagination, or by any Faculty of our Souls; because whatsoever we can comprehend fully and distinctly in our Minds, must be *Finite*. And yet, when we pronounce God to be *Infinite*, we are not to think we have a full *Notion* of Him; for by the word *Infinite* we denote nothing in the Thing it self; but only declare the Impotence of our Understandings, and we do, as it were, say, that we are not able to comprehend the Greatness of his Essence. Hence also it is, that we cannot rightly say of God that he has any *Parts*,

V. *God infinitely perfect.*

as neither that *He* is *All* any thing; for these are Attributes of things *finite*; nor that he is contain'd in any *Place*, for that denotes Limits and Bounds; nor that He *moves* or *rests*, for both those suppose Him to be in a place: So neither can any thing be properly attributed to God which intimates *Grief*, or any *Passion*, such as *Anger*, *Repentance*, *Mercy*. I say *properly*; because when the inspir'd Writers sometimes use such Expressions, speaking of the Almighty, they are not to be understood in a proper Sense, but as accommodating their Language to the common Apprehensions and Capacities of Men; so that we are not to understand hereby that God receives the same Impressions from external Objects that Man receives, but only by way of similitude, as to the *Event* or *Effect*; thus God is said to be angry with, and to be offended at Sinners, not that such Passions or Affections can possibly be in the Divine Nature, but because he will not suffer those who break his Laws to go unpunish'd. Nor may we say of Him ought that denotes the *Want* or Absence of any Good, as *Appetite*, *Hope*, *Concupiscence*, *Desire* of any thing; for these imply *Indigence* and consequently *Imperfection*; it not being supposable that one should desire, hope, or crave any thing of which he does not stand in some need. And so when *Understanding*, *Will*, *Knowledge*, and acts of the Senses, *Seeing*, *Hearing*, *&c.* are attributed to God, they are to be taken in a much more sublime Sense, than we conceive them in our selves. For the Will in us is a *rational Desire*; but *Desire*, as it is said afore, presupposes the *Want* or *Absence* of something

that

that is agreeable and necessary. And *Understanding* and *Sense* imply some Operation upon the Faculties of Man, wrought by exterior Objects upon the Organs of his Body and the Powers of his Soul; which being Signs of a Power *depending* upon some other Thing, demonstrate it not to be *most perfect*.

LASTLY, it is utterly repugnant to the Divine Perfection to say there are *more Gods* than *one*; for, beside that the admirable Harmony of the World argues it to have but *one* Governour, GOD would not be *infinite*, if there were more Gods of equal Power with himself, and not depending upon Him; for it involves a Contradiction to say, There are *many Infinites*. Upon the whole then, 'tis most agreeable to Reason, when we attempt to express the *Attributes* of God, either to make use of Words of a *Negative* signification, as Infinite, Incomprehensible, Immense, Eternal, *i. e.* which had no Beginning nor shall have End; or *Superlative*, as most Excellent, most Powerful, most Mighty, most Wise, *&c.* or *Indefinite*, as Good, Just, Creator, King, Lord, *&c.* and this in such a Sense as we would not think our selves to express *What* he is, but only in some sort to declare our *Admiration* of Him, and profess our *Obedience* to Him; which is a token of an humble Soul, and of a Mind paying all the Veneration it is capable of. *God but One.*

VI. THE Propositions of *Practical* Natural Religion are partly such as concern the *Internal*, and partly the *External Worship of God*. The *Internal* Worship of God consists in *honouring* Him. Now *Honour* is a high Opinion of another's *Power* conjoyn'd with *Goodness*: And *Internal Worship of God.*

the Mind of Man is obliged, from a Consideration of this his Power and Goodneſs, to fill it ſelf with all that Reverence towards him, of which its Nature is ſuſceptible. Hence it is, that it is our Duty to *love* him, as the Author and Beſtower of all Manner of Good; to *hope* in him, as from whom only all our Happineſs for the future does depend; to *acquieſce* in his Will, he doing all things for the beſt, and giving us what is moſt expedient for us; to *fear* him, as being moſt powerful, and the offending whom renders us liable to the greateſt Evil; Laſtly, in all things moſt humbly to *obey* him, as our Creator, our Lord, and our beſt and greateſt Ruler.

VII. *External Worſhip of God.* THE *External Worſhip* of God is chiefly ſhewn in theſe Inſtances:

1. WE muſt *render Thanks to God for all* thoſe manifold *Bleſſings* he has ſo bountifully beſtow'd upon us.

2. WE muſt conform, as far as we poſſibly can, all our Actions to his Will; that is, we muſt *obey all his Commands.*

3. WE muſt *Admire and Adore his infinite Greatneſs.*

4. WE muſt *Offer up to him our Prayers and Supplications,* to obtain from him thoſe Benefits we ſtand in need of, and to be delivered from thoſe Evils we are in fear of. Indeed our Prayers are Proofs of our *Truſt* and *Hope* in Him, and our Hope is a plain Acknowledgment of the Power and Goodneſs of him in whom it is placed.

5. WHEN we find it neceſſary to take an Oath, we muſt *ſwear by no other Name than the Name of God*; and then we muſt *moſt religiouſly*

giously observe what we have engaged our selves to in calling GOD to witness; and this we are indispensably obliged to, from the Consideration of God's infinite Knowledge and his Almighty Power.

6. We must *never speak of GOD but with the highest Respect and utmost Reverence.* Such a Behaviour is a Proof of our Fear of God; and Fear is an Acknowledgment of his Power over us, whom we dread. Hence then it follows, that *the Holy Name of GOD is not to be mention'd in our Discourse upon unnecessary and trifling Occasions*, since this would be great Disrespect; That *we ought not to swear at all but upon great and solemn Occasions*; for calling God to witness upon Matters of small Weight and Moment, is a great Abuse of his Holy Name. That *we engage not our selves in over-nice and curious Enquiries and Disputes about the Nature of GOD, and the Methods of his Providence:* This would be to magnify and exalt our own Capacities, and vainly to imagine, that the unsearchable Nature and Providence of God could be comprehended within the narrow Limits of our shallow Reason.

7. *Whatsoever is done for the Sake of GOD, or in Obedience to his Will, ought to be the most excellent in its Kind, and done after such a Manner, and with such Circumstances, as are most proper to express the profound Honour and Veneration we have for Him.*

8. We must *serve and worship him, not only in private, but also in publick, in the sight of Men*; for to do any thing in secret only, seems to hint as if we were ashamed to act it openly; but Worship *publickly* paid, not only gives Testimo-

ny of our own Devotion, but excites others by our Example to do the like.

9. And Lastly, We are to use our utmost Endeavour to *observe the Laws of Nature*; for as it is the greatest Affront to slight the Commands of God, so, on the contrary, Obedience to his Laws is more acceptable than any Sacrifice; and we have proved, that the *Law of Nature* is the *Law of God.*

VIII. *Eternal Salvation not acquired by Natural Religion alone.* And yet, after all, it must be confest, that the Effects of this *Natural Religion*, nicely consider'd, and with regard to the *present State of Mankind*, are concluded within the Prospect of *this* Life; but that it is of no Avail towards procuring *eternal Salvation.* For *Human Reason*, left alone to it self, knows not that the *Pravity*, which is so discernable in our Faculties and Inclinations, proceeded from Man's *own Fault*, and that hereby he becomes obnoxious to the *Wrath* of God, and to *eternal Damnation*: So that with the Guidance of *this* only, we are altogether ignorant of the Necessity of a *Saviour*, and of his *Office* and *Merit*; as well as of the *Promises* made by God to Mankind, and of the several *other* Matters thereupon depending, by which alone, it is plain from the holy Scriptures, that everlasting Salvation is procured to mortal Men.

IX. *Religion the firmest Bond of Society.* It may be worth the while, yet a little more distinctly to consider the Benefits which through *Religion* accrue to Mankind; from whence it may appear, that * *It is in truth*

* *L. N. N. lib.* 7. *cap.* 4. § 8. *Eris. Scand.* § 6. *p.* 7. *Epist. ad Schetzer. p.* 84. *Append. p.* 108. *seq. Spicileg. Controv.* § 16. *p.* 350. *Exam. Doctrin.* § 2. *quæst.* 316. *Discuss. Calumn. Beckmann. p.* 169.

the

the utmost and firmest Bond of Human Society. For in the Natural Liberty, if you take away the *Fear* of a *Divine Power*, any Man who shall have confidence in his own *Strength*, may do what Violences he pleases to others who are weaker than himself, and will account *Honesty*, *Modesty*, and *Truth* but as empty Words; nor will he be persuaded to do that which is right by any Arguments, but from a Sense of his own *Inability* to act the contrary. Moreover, lay aside *Religion*, and the *Internal Bonds* of Communities will be always slack and feeble; the Fear of a temporal *Punishment*, the *Allegiance* sworn to Superiours, and the *Honour* of observing the same, together with a *grateful Consideration* that by the Favour of the supreme Government they are defended from the Miseries attending a *State of Nature*; all these, I say, will be utterly insufficient to contain unruly Men within the Bounds of their Duty. For in this case that Saying would indeed have place, * *He that values not Death, can never be compell'd*; because to those who fear not *God* nothing can be more formidable than *Death.* He that can once bring himself to despise *this*, may attempt what he pleases upon those that are set over him; and to tempt him so to do, he can hardly want some *Cause* or *Pretence*; as, either to free himself of the Uneasiness he seems to lie under by being subject to another's Command, or that himself may enjoy those Advantages which belong to him that possesses the Government; especially when

* ——— *Cogi qui potest, nescit mori.*
Seneca Hercul. fur. ver. 425.

he may easily persuade himself, that his Enterprise is just, either because He that at present sits at the Helm of Government is guilty of Mal-Administration, or that himself thinks he could manage it by many degrees to better purpose. An *Occasion* too cannot long be wanting for such Attempts, either from the Prince's Want of Circumspection in the care of his Person, (and indeed in such a State of Things * who shall guard even the Guards themselves?) or from a powerful Conspiracy, or, in time of foreign War, from a Defection to the Enemy. Beside *private* Men would be very prone to wrong one another; for the Proceedings in *human Courts* of Judicature being govern'd by *Proofs* of Matter of Fact, all those *Wickednesses* and *Villanies* which could be *secretly* acted and without Witnesses, if any thing were to be gain'd by them, would be accounted *Dexterities of Wit*, in the practice of which a Man might enjoy some Self-satisfaction. Again, no Man would be found that would do Works of *Charity* or of *Friendship*, except with probable Expectation of Glory or Profit. From whence it would follow, that, supposing no Punishment from above, one Man not being able to place any solid Confidence in the Troth of another, they must every one always live anxiously in a mutual *Fear* and *Jealousy*, lest they be cheated or harm'd each by his Neighbour. The *Governours* also would have as little Inclination, as

* —— *Pone seram, cohibe, sed quis custodiet ipsos Custodes?*

Juv. Sat. VI. ver. 346, 347.

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the *Governed*, to Actions that are *brave* and *honourable*; for those that govern not being obliged by any Tie of Conscience, would put all Offices, and even Justice itself to sale; and in every thing seek their own *private Profit* by the Oppression of their Subjects; from whom they being always fearful of a *Rebellion*, they must needs know, there can be no surer Means to preserve themselves, than by rendring them as *heartless* and as *weak* as possible. The *Subjects* also, on the other side, standing in fear of the Violences of their Rulers, would always be seeking Opportunities to *rebel*, tho' at the same time they must be mutually distrustful and fearful of each other. The same would be the Case of *married Persons*; upon any slight Quarrel, they would be suspicious lest one should make away the other by Poison or some such *clandestine* Way; and the whole Family would be liable to the like Danger. For it being plain, that without *Religion* there could be no *Conscience*; it would not be easy to discover such *secret Villanies*; they being such as mostly are brought to light by the incessant pricking of the *Conscience*, and *internal Horrors* breaking forth into outward Indications. From all which it appears, how much it is the Interest of Mankind, that all Means be used to check the spreading of *Atheism* in the World; and with what *vain Folly* those Men are possess'd, who think to get the Reputation of being notable *Politicians*, by being seemingly inclin'd to *Looseness* and *Irreligion*.

CHAP. V.

Of the Duty of a Man towards Himself.

I. *Man liable to Obligation to Himself.*

ALTHOUGH the *Love of himself* be so deeply fix'd in the Mind of Man, as to put him always under a Sollicitous Care of Himself, and upon Endeavours by all means to procure his own Advantage; so as, upon Consideration *hereof*, 'twould seem superfluous to find out *Laws* to oblige him to the same: * yet in *other* Respects it is necessary, that he be bound to the Observation of some certain *Rules* touching *Himself*. For, not being born for himself alone, but being therefore furnish'd with so many excellent *Endowments*, that he may set forth his *Creator*'s Praise, and be rendred a fit Member of *Human Society*; it follows hence, that it is his *Duty*, to cultivate and improve those Gifts of his Creator which he finds in himself, that they may answer the End of their *Donor*; and to contribute

L. N. N. l. 1. c. 4.

* The Duties of every Man, which directly and solely respect himself, have their immediate Foundation in that *LOVE* which every Man by Nature hath *OF HIMSELF*; which was before laid down as one of the grand Principles of Natural Right, and which not only obliges a Man to preserve himself as far as possibly he can, without prejudice to the Laws of Religion or Sociality; but also to put himself into the best Condition he can, and to obtain all the Happiness of which he is innocently capable. *See L. N. N. Lib. II. Cap.* III. § 15.

all

all that lies in his Power to the Benefit of *Human Society.* Thus, though true it is, that the *Ignorance* of any Man is *his own* Shame and *his own* Loſs; yet we accuſe not the Maſter of Injuſtice, who chaſtiſes his Scholar for *Negligence* in not learning thoſe Sciences of which he is capable.

AND ſince Man conſiſts of two Parts, a *Soul* and a *Body*, whereof the firſt ſupplies the Part of a *Director*, the other that of an *Inſtrument* or *ſubordinate Miniſter*; ſo that our Actions are all performed by the Guidance of the *Mind*, and by the Miniſtration of the *Body*; we are hence obliged to take care of both, but eſpecially the former. II. *The general Obligation that every one lies under to take care of his Soul.*

THE *Care of the Soul* conſiſts, in general, in the right Formation of the Mind and Heart; that is, not only in framing to our ſelves true and juſt Opinions concerning all thoſe Things to which our Duties bear any reference, and in making a true Judgment of, and ſetting a right Value upon, thoſe Objects which commonly excite our *Appetites*; but alſo in regulating the Diſpoſitions of our Minds; in reducing and conforming them to the Dictates of right Reaſon; in employing our Time and Pains in the Proſecution of honeſt Arts and Sciences; and, in one word, in getting our ſelves poſſeſt of all thoſe Qualities which are neceſſary for us to lead an *honeſt* and a *ſociable* Life.

AMONG all the *Opinions* then, which it highly concerns all Men firmly to *ſettle* in their Minds, the chief are thoſe which relate to ALMIGHTY GOD, as the great Creator and Governour of the Univerſe, ſuch as are repreſented in the foregoing Chapter. III. *Particular Duties to which this Care of our Soul obliges us.*

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1. To ſettle in our ſelves right Opinions of Religion. L. N. N. l. 1. c. 4. § 7.

The full Perſuaſion of theſe *great Truths* being not only the principal Ground of *the Whole Duty of Man to God,* but the Foundation of all thoſe Virtues which we are to exerciſe toward our Neighbour, and the true Source of all that Quiet of Conſcience and Tranquillity of Mind, which is one of the greateſt Bleſſings of Life. Since no ſober and conſidering Man can deny theſe Truths, we muſt diligently avoid and utterly reject all thoſe Opinions, which contain in them any thing *contrariant* to Principles ſo important. By which I mean not only *Atheiſm* and *Epicuriſm,* but all other Sentiments which are prejudicial to Human Society, or deſtructive of good Manners; ſuch being incompatible with true Religion, and overturning the very Foundation of the Morality of Human Actions; of which kind there are many Inſtances.

THE firſt I ſhall mention is the Stoical Conceit of *Fate* or *Deſtiny,* and (which nearly reſembles it) *Judicial Aſtrology*; by which it being ſuppoſed, that all things happen in the World by an internal and inevitable Neceſſity, Men muſt be looked upon as the ſimple Inſtruments only of their own Actions; for which, conſequently, they are no more accountable upon this Preſumption, than a Clock is anſwerable for the Motion of its Wheels.

ANOTHER Opinion there is very nearly allied to this, which ſuppoſes the unalterable Conſequences of Cauſes, and of Effects, or the great Chain of Things, eſtabliſhed by the Creator, to ſtand by ſuch an Immoveable Decree, that even GOD has left Himſelf no Liberty of interpoſing in particular Caſes.

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Most pernicious likewiſe is that Conceit, which makes GOD allow a kind of Market of Sins, ſo as to ſuffer them to be bought off with Money, to be commuted for with Offerings, with the Obſervance of ſome vain Ceremonies, or the Utterance of ſome ſet Forms of Speech, without Amendment of Life, and an honeſt Endeavour to become Good Men. To this may be joyned, the ſottiſh Imagination of ſuch, who fancy that Almighty GOD is delighted with ſuch Inventions of Men, ſuch Inſtitutions and Ways of Living, as are diſagreeable to Human and Civil Society, as it is regulated by the Dictates of Reaſon and the *Laws of Nature.*

All ſuperſtitious Notions, ſuch as debaſe and diſhonour the Divine Nature and Worſhip, are carefully to be avoided, as contrary to true Religion.

The ſame thing muſt be ſaid of the Notions of thoſe Men, who imagin that the bare Exerciſe of Piety towards GOD in Acts of Devotion, as they are called, is ſufficient, without any Regard had to Honeſty of Life, or to thoſe Duties which we are to practiſe towards our Neighbour. Nor is the Conceit of others leſs Impious, who fancy, that a Man may be able, not only to fulfil his own Duty towards GOD, but even exceed what is required of him, and thereby transfer ſome of his Merits on others; ſo that one Perſon's Negligence in his Duty, may be ſupply'd from the Works of *Supererogation*, that is, the Over-righteouſneſs of another. Of the ſame Stamp is that ſhameful Opinion of ſome others, that imagine, that the Wickedneſs of ſome

Actions

Actions is overlooked and excused by GOD, on the Account of the Dexterity, the Humour, or the Gallantry of the Persons who do them; as if such Sins passed only as Jests and Trifles in the Cognisance of Heaven. No less wicked is it to believe, that those Prayers can please GOD, by which a Man desires, that others may suffer an undeserved Evil, for the occasioning or promoting an Advantage to himself; or to imagine, that Men may treat, in the worst manner they please, such as are of a different Persuasion from them in Religious Matters. Not to mention some other such like Opinions, which carry indeed the Pretence of Piety, but in reality tend to the Destruction of Religion and Morality.

IV. 2. To arrive at a true Knowlege of our selves. *The Duties that result from such a knowledge.* L. N. N. l. 2. c. 4. § 5.

WHEN we have thus arm'd our Minds against all false Opinions of the Divine Nature and Worship, the main Concern behind is, for a Man accurately to examine his own Nature, and to study to *know himself.*

FROM this Knowledge of himself, rightly pursued, a Man is brought acquainted with his own Original; he comes to know perfectly his Condition here, and the Part he is to bear in the World. Hereby he will perceive, that he does not exist of himself, but owes his Being and Life to a Principle infinitely superior to him; that he is endowed with Faculties far more noble than he sees enjoy'd by the Beasts about him; and farther, that he was not born by himself, nor purely for his own Service, but that he is a Part of Human kind. From thus knowing a Man's self he must necessarily conclude, that he lives in Subjection to Almighty GOD, that he is obliged, according to the Measure

Meaſure of the Gifts he hath received from his Maker, to ſerve and honour Him; and moreover, to behave himſelf towards his Equals in ſuch a manner, as becomes a Sociable Creature. And in as much as GOD hath beſtowed on him the Light of Reaſon and Underſtanding, to guide him in the Courſe of his Life, it evidently follows, that he ought to make a right Uſe of it: And conſequently *not to act at random, without End or Deſign, but, whatever he undertakes, to propoſe thereby to himſelf ſome particular End, in its ſelf both poſſible and lawful, and to direct his own Actions ſuitably to that End; as alſo to uſe ſuch other Means as he ſhall find proper for the compaſſing it.* Again, from hence it follows, that ſince Truth and Right are always uniform and without alteration, ſo *a Man ought always to form the ſame Judgments of the ſame Things, and when he hath once judged truly, to be always conſtant in his Mind and Reſolution.* Farther it follows, that a Man's Will and Appetite ought not to get the Superiority over his Judgment, but follow and obey it, never making reſiſtance to its Decrees; or, which amounts to the ſame thing, *Men ought to form no Judgments but upon mature Deliberation, nor ever to act againſt their Judgments ſo formed.*

Besides, by conſidering and knowing himſelf, a Man will rightly apprehend his own Strength and Power: He will find that it is of a finite nature, having certain Limits beyond which it can never extend it ſelf; and therefore, that there are many Things in the World which he can no ways manage or compaſs, many that he can no ways hinder or reſiſt;

L. N. N. l. 2. c. 4. § 3.

ſiſt, and other Things again not abſolutely above Human Power, but which may be prevented and intercepted by the Interpoſition of other ſuperior Powers. Again, another Sort of Things there are, which though we cannot compaſs by our bare Strength, yet we may, if it be aſſiſted and ſupported by Dexterity and Addreſs.

WHAT ſeems to be moſt free from outward Reſtraint, and moſt within our own Power is our *Will*; eſpecially ſo far as it is concerned in producing and exerting Actions ſuitable to our Species of Being, as we are reaſonable Creatures. Hence it follows, that *every Man ought to make it his main Care and Concern, rightly to employ all his Faculties and Abilities, in conformity to the Rules of right Reaſon.* For this is the Standard by which we are to rate the Worth of every Perſon, and to meaſure his intrinſical Goodneſs and Excellency.

As to other Matters which lie without us, before he enters upon the Purſuit of them, *A Man ſhould diligently examine, Whether they do not ſurpaſs his Strength? Whether they tend to a lawful End?* and, *Whether they are worth the Labour which muſt be ſpent in obtaining them?* When, upon mature Deliberation, he is reſolved to engage in any ſuch Affairs, a wiſe Man will indeed uſe his beſt Efforts to bring his Deſign about; but if he finds thoſe Endeavours ineffectual, he will not ſtrive againſt the Stream, and drive on his Deſigns with vain Hope, but quit his Purſuit without Grief or Anger at his Diſappointment. From theſe Conſiderations this further Conſequence may be drawn; That Man, as he is guided only by the Light of

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Reason, ought principally to aspire after that Happiness in this World, which arises from the prudent Government of his Faculties, and from those Assistances and Supports which the Divine Providence he knows will afford him in the universal Administration of things. Hence he will not leave things to meer Hazard and Chance, while there is room for Human Caution and Foresight. But then, since human Foresight is very weak in discovering future things, which are so far from being under our Guidance, that they frequently fall out beyond our Hopes and Expectations: Hence it is plain, that we ought neither too securely to trust to our present Condition, nor to spend too much Care and Anxiety on what is to come: and for the same reason, Insolence in Prosperity and Despair in Adversity are to be both avoided, as equally dangerous and equally absurd.

ANOTHER necessary Improvement of our Mind and Understanding is, *To be able to set a just Price on those Things which are the chief in moving our Appetites.* For, from this Knowledge it is that the degree of Desire is to be determined, with which we may seek after them. V. 3. To regulate the measure of our Desires in proportion to the Just value of the things we desire.

AMONG these, that which bears the greatest sway, and appears with most splendor, and which most forceably moves Elevated and Noble Souls, is the Opinion of Worth and Excellency; an Opinion from whence springs what we usually call *Glory* or *Honour*: In respect to which we are to form and temper our Minds in the following manner. *How we ought to seek for Honour or Esteem.* L. N. N. l. 2. c. 4. § 9.

WE must use our utmost Care and Endeavour to procure and preserve that kind of *Esteem* that

that is *simply* so called, that is, the Reputation of being Good and Honest Men; and if this Reputation be assaulted by the Lies and Calumnies of Wicked Men, we are to use all possible Pains to wipe them off; but if that be not in our Power, we are to comfort our selves with the Testimony of a good Conscience, and with the Assurance, that our Integrity is still known to GOD.

As for that *Esteem*, which is oft-times called *Intensive*, or *Esteem of Distinction*, but more commonly *Honour* or *Glory*, we are no otherwise to pursue it, than as it redounds from such worthy Actions as are conformable to Right Reason, and productive of the Good of Human Society; but even then good Heed is to be taken, that hereby our Mind do not swell with Arrogance and Vain-glory. If at any time we have no Opportunity, or want an Occasion of shewing our Worth, without being able to procure one, we must bear this ill Fortune with Patience, since there is nothing in it that can be charged upon our Default. To value our selves upon, and make our boasts of what is empty, vain, and trifling, is most impertinent and ridiculous; but it is abominably Wicked, as well as extremly Foolish, to aspire to Fame and to Honours by evil Arts, and by Deeds repugnant to Reason; and to desire Preheminence above others, only to be able to insult over them, and to make them obnoxious to our Pleasure.

VI. *In what manner we may desire* Riches.

The *Desire of outward Possessions, Riches, and Wealth*, does also prevail greatly in the Minds of Men; and no wonder, since Men have not only need thereof for their own Sup-

Support and Preſervation in the World, but alſo often lie under an indiſpenſible Duty to provide them for others. But then, becauſe our Wants are not infinite, but lie in a very narrow Compaſs, and ſince Nature is not wanting in a plentiful Proviſion for the Neceſſities of her Sons; and laſtly, ſince all that we can heap together muſt, at our Death, fall to others; we muſt moderate our Deſire and our Purſuit of thoſe Things, and govern our ſelves in the Uſe of them according to the juſt Occaſions of Nature, and the modeſt Demands of Temperance and Sobriety. We muſt do no diſhoneſt or baſe Thing for the procuring them; we muſt not increaſe them by ſordid Avarice, nor ſquander them away by profuſe Prodigality, nor in any ways make them ſubſervient to vicious and diſhoneſt Purpoſes. Farther, ſince Riches are of a very periſhable Nature, and may be taken from us by many Accidents and Caſualties, we muſt, with reſpect to 'em, put our Mind in ſo even a Temper, as not to loſe it ſelf if it ſhould happen to loſe them.

VII. *In what manner we may deſire* Pleaſures. L. N. N. l. 2. c. 4 § 11.

THE Deſire of *Pleaſures* does as ſtrongly excite the Minds of Men as that of *Honour* or *Riches*: In reference to theſe we muſt obſerve, that there are *Innocent Pleaſures* and *Criminal Pleaſures*. The latter of which muſt be always avoided; but it is by no means a Fault to enjoy the former, provided it be done with moderation, and in conformity to the Rules of Temperance and Sobriety. As there is no Fault to avoid, as much as may be, unneceſſary Grief and Pain, becauſe they tend to the Deſtruction of the Body; ſo Reaſon, on the other ſide, is ſo far from forbidding us the Enjoyment of

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moderate Recreation and innocent Pleaſure, that it directs us to entertain our Senſes with ſuch Objects as are, in this manner, agreeable and delightful to them, ſince hereby the Mind is unbent and refreſh'd, and render'd more active and vigorous. But then, in the Enjoyment of theſe lawful and innocent Gratifications, great Care is to be taken, that we enjoy them to ſuch a Degree only, that we be not thereby weakened and enervated; that neither the Vigour of the Body or Soul be thereby leſſen'd; that they waſte not nor conſume our Wealth, when it might be better and more uſefully laid out; and that they ſteal not our Time from better and more neceſſary Employments. Laſtly, This muſt be an inviolable Rule, that no Pleaſure muſt be purchaſed at ſo dear a Rate, as the Neglect or Tranſgreſſion of our Duty; nor ought any to be receiv'd that brings after it Loſs, Diſgrace, Sorrow, or Repentance.

VIII. 4. *We ought to ſubject our Paſſions to the Government of our Reaſon.* L. N. N. l. 2. c. 4 § 11.

LASTLY, The chief Care incumbent on us, in order to improve and well cultivate our Mind, is, to uſe the utmoſt Diligence, *To gain the Maſtery over our Paſſions*; to maintain the Sovereignty of our Reaſon over the Motions and Affections of our Minds; the greateſt Part of which, if they gain the Aſcendant, and grow maſterleſs, do not only impair the Health of the Body, and the Vigour of the Soul; but caſt ſuch a Cloud on the Judgment and Underſtanding, as to wreſt them violently from the Ways of Reaſon, and of Duty. So that the natural Principle of Prudence and Probity amongſt Men, may be juſtly ſaid to be found-

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ed in calming and cooling the Paſſions. But let us briefly ſpeak of them in particular.

JOY is in it ſelf a Paſſion moſt agreeable to Nature; but ſtrict Care is to be taken, that it break not out on improper Occaſions, that it ſhew not itſelf in Matters vain or trifling, baſe or indecent.

SORROW, like a Canker, waſtes both the Body and Soul: it is therefore as much as poſſible to be remov'd and expell'd, nor ever to be admitted, even moderately, unleſs when by the Ties of Humanity, we are obliged to expreſs our Concern, or Pity at the Misfortunes, or at the Deaths of others; and as it is requiſite to the great Duty of Repentance.

LOVE is a Paſſion of a benevolent and friendly Nature to Mankind; but yet it is to be ſo wiſely managed and moderated, that it be not fix'd upon an unworthy Object; that we take not unlawful Ways to ſatisfy its Demands; that it keep within due Bounds, ſo as not to degenerate into Diſeaſe and Diſquiet, if the beloved Object is not to be obtained.

HATRED is a Paſſion pernicious, as well to the Perſon who employs it, as to thoſe againſt whom it is employ'd; it is therefore diligently to be quenched and ſtifled, leſt it betray us to Injuries, and Breach of Duty againſt our Neighbours. And when any Perſons do really deſerve our Averſion, we muſt even then take care not, on their Account, to create Uneaſineſs and Diſquiet to our ſelves.

ENVY is a moſt deform'd Monſter, ſometimes producing ill Effects in others, but always in the Envious Perſon, who, like Iron can-

kered with Ruſt, not only defiles, but deſtroys himſelf continually.

HOPE, although in it ſelf a Paſſion mild, eaſy, and gentle, yet is it alſo to be brought under due Regulation. We muſt be careful not to direct it to Things vain or uncertain; nor, by placing it on Objects out of our Reach, and beyond our Power, make it tire it ſelf to no purpoſe.

FEAR, as it is a dangerous Enemy to Men's Minds, ſo is it a Paſſion altogether uſeleſs and unprofitable. It is indeed by ſome eſteemed the Parent of good Caution, and conſequently, the Occaſion of Safety; but this good Caution may owe it ſelf to a much better Principle, it may ariſe without the Aſſiſtance of Fear, from a wary Circumſpection, and a Prudence alike untouched with Anxiety or with Conſternation.

ANGER is the moſt violent, as well as the moſt deſtructive of all the Paſſions, and is therefore to be reſiſted with our utmoſt Strength and Endeavour. It is ſo far from exciting Men's Valour, and confirming their Conſtancy in Dangers, as ſome alledge, that it has a quite contrary Effect; for it is a Degree of Madneſs, it renders Men blind and deſperate, and runs them headlong into their own Ruin.

DESIRE OF REVENGE is nearly related to *Anger*; which, when it exceeds a Moderate Defence of our ſelves and Concerns, and a juſt Aſſertion of our Rights againſt the Invaders of them, turns, beyond Diſpute, into a Vice.

IX. *How far the Study of Arts*

In ſuch Duties as we have reckoned up doth that Culture of the Mind chiefly conſiſt, which all Men are indiſpenſably obliged to look after: But

But there is ſtill behind a more peculiar Culture and Improvement of the Mind, conſiſting in the various Knowledge of Things, and *the Study of Arts and Sciences.* This Knowledge, it is true, cannot be ſaid to be abſolutely neceſſary to the Diſcharge of our Duty in general, but yet muſt by all be allowed to be exceedingly uſeful to ſupply the Neceſſities and promote the Conveniencies of Human Life, and therefore by every one to be followed, according as his own Capacity and Occaſion will permit.

and Sciences is neceſſary. L. N. N. l. 2. c. 4. § 13.

No one diſputes the *Uſefulneſs of thoſe Arts,* which ſupply the Neceſſities or contribute to the Convenience of Human Life.

As to *Sciences*; ſome may be ſtiled *Uſeful*; others *Curious,* and others again *Vain.*

In the Number of *uſeful Sciences,* I reckon *Logick,* which teaches to reaſon juſtly, cloſely, and methodically; thoſe *Sciences which have any reſpect to Morality, Phyſick, and all ſuch Parts of Mathematicks as lay the Foundation of thoſe practical Arts,* which ſerve to procure and augment the Neceſſaries or Conveniencies of Life.

By *Curious,* or *Elegant Sciences,* I underſtand ſuch as are not indeed of ſo neceſſary Uſe, as to render the Life of Man leſs ſociable, or leſs convenient upon the Want of them; but yet ſuch as ſerve to gratify and pleaſe an innocent Curioſity, to poliſh and adorn our Wit, and to embelliſh and render our Underſtanding more compleat: Such *Sciences* are, *Natural and Experimental Philoſophy, the more fine and ſubtile Parts of Mathematicks, Hiſtory, Criticiſm, Languages, Poetry, Oratory,* and the like.

By *Vain Sciences*, I mean such as are made up of false and erroneous Notions, or are employ'd about frivolous, trifling, and unprofitable Speculations; such are *the Amusements of old Philosophers, the Dreams of Astrologers*, and *the Subtilties of the School-men.*

To employ Labour and Pains in these last Sort of Studies is highly unworthy any Man, and an unpardonable Waste of his Time. But whosoever would not deserve to be accounted an useless Lump on Earth, a Trouble to himself and a Burthen to others, ought, as far as he has Means and Opportunity, to employ himself in some of the aforemention'd *Arts* and *Sciences.* Every one at least ought, in a proper Time, *to take upon himself some honest and useful Employment*, agreeable to his natural *Inclinations*, suitable to the *Abilities* of his *Body* and *Mind*, *Extraction*, and *Wealth*; or according as the just *Authority* of his *Parents*, the *Commands* of his *Superiours*, or the *Occasion* and *Necessity* of his own *private Circumstances* shall determine.

X. *Wherein consists the Care of the Body.*

Altho' the Care of our Soul, which we have been explaining, is the most difficult, as well as the most necessary Part of our Charge in this Life, yet ought we by no means to neglect *the Care of our Body*; these two constituent Parts of us being so strictly united and ally'd to each other, that no Injury or Hurt can come to the one, but the other must likewise bear its Part in the Suffering.

We must therefore, as far as possible, continue and increase the *natural Strength* and *Powers* of our Bodies, by convenient *Food* and proper *Exercise*; not ruining them by any *Intemperate*

perate Excess in Eating or Drinking, nor wasting and consuming them by unnecessary or immoderate *Labours*, or by any other Abuse or Misapplication of our *Abilities*. And upon this Account, *Gluttony*, *Drunkenness*, the immoderate Use of *Women*, and the like, are to be avoided: And besides, since unbridled and exorbitant *Passions*, not only give frequent Occasion to disturb *Human Society*, but are very hurtful even to the Person *himself*; we ought to take care with our utmost to quell *them*, and subject *them* to Reason. And because many Dangers may be escap'd, if we encounter 'em with *Courage*, we are to cast off all *Effeminacy* of the Mind, and to put on *Resolution* against all the terrible Appearances that any Event may set before us.

XI. *Whether a Man has the Power of his own Life.*

AND yet, because no Man could give *himself* Life, but it must be accounted as the bounteous Favour of *God*, it appears, that Man is by no means vested with such a Power over his own *Life*, as that he may put an *End* to it when he pleases; but he ought to tarry, till he is call'd off by Him who placed him in this Station. Indeed, since Men both can and ought to be serviceable to one another, and since there are some Sorts of Labour, or an Overstraining in any, which may so waste the Strength of a Man, that old Age and Death may come on much sooner than if he had led an easy and painless Life; there is no doubt but that a Man may, without any Contravention to this Law, chuse that Way of living which may with some probability make his Life the *shorter*, that so he may become more useful to Mankind. And whereas sometimes the Lives of *many* will be

 lost,

loſt, except ſome Number of Men expoſe themſelves to a Probability of loſing their own on their behalf; in this Caſe the lawful *Governour* has Power to lay an Injunction on any *private* Man under the moſt grievous Penalties, not to decline by Flight ſuch Danger of loſing his Life. Nay farther, he may of *his own Accord* provoke ſuch Danger, provided there are not *Reaſons more forcible* for the contrary; and by thus Adventuring he has hopes to ſave the Lives of *others*, and thoſe *others* are ſuch as are worthy ſo dear a Purchaſe. For it would be ſilly for any Man to engage his Life together with another to *no purpoſe*; or for a Perſon of *Value* to die for the Preſervation of a *paltry Raſcal.* But for any other Caſes, there ſeems nothing to be required by the *Law of Nature*, by which he ſhould be perſuaded to prefer another Man's Life before his own, but that all things rightly compared, every Man is allowed to be *moſt dear* to *himſelf.* And indeed all thoſe who voluntarily put an end to their own Lives, either as *tir'd* with the many *Troubles* which uſually accompany this Mortal State; or from an *Abhorrence* of *Indignities* and *Evils* which yet would not render them ſcandalous to *Human Society*; or thro' *Fear*, or *Pains*, or *Torment*, by enduring which with Fortitude, they might become uſeful Examples to others; or out of a vain *Oſtentation* of their *Fidelity* and *Bravery*; All theſe, I ſay, are to be certainly reputed *Sinners againſt the Law of Nature.*

XII. *Self-Defence moderated.* BUT whereas it often happens that this *Self-Preſervation*, which the tendereſt Paſſion and exacteſt Reaſon thus recommends to Mankind, does ſeem to interfere with our Precepts concerning

cerning *Society*, then when our own Safety is brought into Jeopardy by another, so far that either we must perish, or submit to some very grievous Mischief, or else we must repel the Aggressor by force and by doing him Harm; Therefore we are now to deliver, *With what Moderation the Defence of our selves is to be tempered.* This Defence of our selves then will be such as is, either *without any Harm* to him from whom we apprehend the Mischief, by rendring any Invasion of us formidable to him and full of Danger; or else by *hurting* or *destroying* him. Of the *former* way, [whether (in *private* Men) by *keeping off* the Assailant, or by *Flight*, &c.] there can be no Doubt but that 'tis lawful and altogether blameless.

XIII. *We may repel force by force, even so far as to kill an unjust Aggressor.* L. N. N. l. 2. c. 5. § 2.

But the *latter* may admit of Scruple, because Mankind may seem to have an *equal Loss*, if the *Aggressor* be killed, or if I lose *my* Life; and because one in the same Station with my self will be destroyed, with whom it was my Duty to have lived in *Civil Society*: Beside, that a *forcible Defence* may be the Occasion of *greater Outrages*, than if I should betake my self to flight, or patiently *yield* my Body to the Invader. But all these are by no means of such Weight as to render this Sort of Defence unlawful. For when I am dealing fairly and friendly with *another*, it is requisite that he shew himself ready to do the *like*, or else he is not a fit Subject of such good Offices from me. And because the End of the Law of Society is the *Good of Mankind*, therefore the Sense thereof is to be taken, so as effectually to preserve the Welfare of every *Individual* or particular Man. So that if another Man make an *Attempt*

tempt upon my Life, there is no Law that commands me to *forgoe* my own Safety, that ſo he may practiſe his Malice with *Impunity*: And he that in ſuch caſe is *hurt* or *ſlain*, muſt impute his Miſchief to his own *Wickedneſs*, which ſet me under a Neceſſity of doing what I did. Indeed otherwiſe, whatſoever *Good* we enjoy either from the Bounty of *Nature*, or the Help of our own *Induſtry*, had been granted to us in vain, if we were not at liberty to *oppoſe* the Violences of Ruffians, who would wrongfully raviſh all from us; and *honeſt* Men would be but a ready Prey for *Villains*, if they were not allowed to make uſe of *Force* in defence of themſelves againſt ehe others Inſults. * Upon the whole then, it would tend to the *Deſtruction* of Mankind, if *Self Defence* even with *Force* were prohibited to us.

XIV. *Extremities laſt to be uſed.* L. N. N. l. 2. c. 5. § 3.

NOT however that hence it follows, that as ſoon as any *Injury* is threatned us, we may *preſently* have recourſe to *Extremities*; but we muſt firſt try the *more harmleſs Remedies*; for inſtance, we muſt endeavour to keep out the Invader by cutting off his Acceſs to us; to withdraw into ſtrong Places; and to admoniſh him to deſiſt from his outragious Fury. And it is alſo the Duty of a prudent Man to put up a *ſlight Wrong*, if it may conveniently be done, and to *remit* ſomewhat of his Right, rather than, by an unſeaſonable Oppoſition of the Violence, to expoſe himſelf to a *greater Danger*; eſpecially if that Thing or Concern of

* See *Grotius de Jure Belli & Pacis*, *Lib.* I. & *Chap.* 2. *Lib.* II. *c.* 1. § 3. & *ſeq.*

ours

ours upon which the Attempt is made, be ſuch as may eaſily be made amends for or repaired. * But in Caſes where by theſe or the like means I cannot ſecure my ſelf, in order to it I am at liberty to have recourſe even to *Extremities.*

BUT that we may clearly judge, whether a Man contains himſelf within the Bounds of an *unbleameable Defence of himſelf*, it is firſt to be examined, whether the Perſon be one who is in a State of *Natural Liberty* or *ſubject to no Man*, or one who is obnoxious to ſome *Civil Power*. In the *firſt* Caſe, if another ſhall offer Violence to me, and cannot be brought to change his malicious Mind and live quietly, I may repel him even by *killing* him. And this not only when he ſhall attempt upon my *Life*, but if he endeavour only to *wound* or *hurt* me, or but to *take away* from me my Goods, without meddling with my Body. For I have no Aſſurance but from theſe *leſſer Injuries* he may proceed to *greater*; and he that has once profeſſed himſelf my Enemy (which he doth whilſt he injures me without Shew of Repentance) gives me, as far as 'tis in his Power to give, a full Liberty of proceeding againſt him, and reſiſting him in ſuch manner as I ſhall find moſt neceſſary for my own Safety. And indeed the *Sociality* neceſſary to Human Life would become unpracticable, if a Man may not make uſe even of *Extremities* againſt him who ſhall irreclaimably *perſiſt* in the Commiſſion tho' but of *meaner Wrongs.* For at that rate the moſt *modeſt* Perſons would be the XV. *Self-Defence how far justifiable in a ſuppoſed ſtate of Natural Liberty.*

* *Grotius de Jure Belli & Pacis, Lib.* 1. *cap.* 1.

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continual Laughing-stock of the *vilest* Rake-hels.

XVI. *How the Right of Self-defence is limited in a State of Civil Society.* L. N. N. l. 2. c. 5. § 4.

But in *Civil Society*, those who are Subects to the *Civil Power*, may then only use Violence in the Defence of themselves, when the Time and Place will not admit of any Application to the Magistrate for his Assistance in repelling such Injuries by which a Man's Life may be hazarded, or some other most valuable Good which can never be repaired, may be manifestly endangered.

XVII. *Of the Time when in a State of Nature Self defence may be allowable.*

As for the time when Men may put in practice their *just Right* of *Self-defence*, it may be learnt from the following Rules.

Altho' every one, under that Independence in which all Men are supposed to be in a *State of Nature*, may and ought to presume, that all Men are inclined to perform towards him all those Duties which the *Law of Nature directs*, until he has evident Proof to the contrary: Nevertheless, since Men have *natural Inclinations* to that which is ill, no one ought to rely so securely on the Integrity of another, as to neglect taking all necessary Precautions to render himself secure, and placed, as far as may be, out of the Reach of other Men's ill Designs. It is but *common Prudence* to stop up all Avenues against those from whom we apprehend Hostilities, to be provided with serviceable Arms, to raise Troops, to get Succour and Assistance, in case of need, by Alliances and Confederacies, to have a watchful Eye over the Actions and Behaviour of those whom we have reason to apprehend to be our Enemies; and, in a word, to use all other Precautions of this Nature, which appear

necessary

neceſſary to prevent our being ſurprized or found unprovided. The Jealouſy and Suſpicion which we ought to have of each other, from our Knowledge of the Pravity of Human Nature, will juſtifie our acting thus far; but then it muſt ſtop here: it muſt not put us upon uſing Violence to our Neighbours, under pretence of diſabling them from injuring us, and of preventing their making a miſchievous Uſe of that ſuperior Power we ſee them have; eſpecially if we find that this Increaſe of Power in them, and their Superiority over us, was the Product of their innocent Induſtry, or the Gift of Providence, and not the Reſult of Injury and Oppreſſion.

* NAY, if our Neighbour, whom we ſee powerful enough to hurt us, ſhould ſhew an Inclination to uſe that Power miſchievouſly, by actually injuring others, yet ſhall not this juſtifie our Aſſaulting him by way of prevention, till we have good Evidence, that he deſigns us alſo Miſchief; unleſs we are under ſome prior Engagement or Alliance, to ſupport the Perſons we ſee thus injuriouſly attacked by a ſuperior Power. In this Caſe we may with greater Vigour oppoſe the Invader, and take the Part of our injured Ally; ſince we have very good Reaſon to apprehend, that when by his ſuperior Power he has oppreſſed him, he will apply the ſame Force againſt us; and that the firſt Conqueſt he makes is to be the Inſtrument of another that he intends.

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* See *Grotius de Jure Belli & Pacis, Lib.* 2. *cap.* 1 § 17, *&c.* and *c.* 22. § 5.

BUT

But when we have evident Proof that another does actually intend, and has taken proper Measures to do us an Injury, altho' he has not openly declared such his Intention; then we may fairly put our selves on our Defence, and anticipate the Aggressor before he compleats the Preparations he is making to do us the designed Mischief: Provided notwithstanding we have endeavoured, by friendly Advice, to move him to lay aside his ill Purposes so long, that there remains no Hopes of his being prevailed upon to do so by fair and gentle Means: In using which friendly Advice and gentle Means, care must be taken, that it be not done when it may prove a Prejudice and a Disadvantage to our own Affairs. He who first forms the Design to do an injurious Act, and first makes Preparation to bring it about, is to be accounted the Aggressor; altho' it may perhaps so fall out, that the other using greater Diligence, may prevent him, and so commit the first open Acts of Hostility. It is not absolutely necessary to a justifiable *Self-defence*, that I receive the first Stroke, or that I only ward off and avoid the Blows that are aimed at me.

But farther: In a *State of Nature* of which we are speaking, a Man has not only a Right to repel a present Danger with which he is menaced, but also, after having secured himself from the Mischief intended him, he may pursue his Success against the Aggressor, till he has made him give him *satisfactory Security of his peaceable Behaviour for the time to come.* Concerning which Caution and Security, the following Rule may be usefully observed: *If a Man having injured me, shall presently after, repenting of what he had done, come voluntarily and ask my Pardon,*

pardon, and offer Reparation of the Damage; I am then obliged to be reconciled to him, without requiring of him any farther Security than his Faith and Promise to live hereafter in Peace and Quietness with me. For when of his own accord any Person takes such measures, it is a satisfactory Evidence, that he has altered his Mind, and a sufficient Argument of his firm Resolution to offer me no Wrong for the future. *But if a Man having injured me, never thinks of asking Pardon, or of shewing his Concern for the Injuries he has done me, till he is no longer in Condition to do them, and till his Strength fails him in prosecuting his Violences; such an one is not safely to be trusted on his bare Promises, his Word alone being not a sufficient Warrant of the Sincerity of his Protestations.* In such Case, in order to our farther Security, we must either cut off from him all Power of doing Mischief, or else lay upon him some Obligation of greater Weight and Force than his meer Promise, sufficient to hinder him from appearing ever after formidable to us.

XVIII. *When and how far a Man may defend himself with arm'd force in a State of Civil Society.*

But among Men who live in a *Community*, the Liberties for *Self-defence* ought not to be near so large. For here, tho' I may know for certain, that another Man has *armed* himself in order to set upon me, or has openly *threatned* to do me a Mischief; this will by no Means bear me out in *assaulting* him; but he is to be *informed* against before the Civil Magistrate, who is to require *Security* for his good Behaviour. The Use of *Extremities* in repelling the Force being then only justifiable, when I am *already* set upon, and reduced to such *Streights*, that I have no Opportunity to require the *Protection* of the Magistrate, or the *Help* of my Neighbours; and even

even then I am not to make uſe of *Violence*, that by the Slaughter of my Adverſary I may *revenge* the Injury, but only becauſe without it my *own Life* cannot be out of *Danger*.

Of the Time when in a State of Civil Society Self-defence may be allowable.

NOW the Inſtant of *Time*, when any Man may with Impunity *deſtroy* another in his own Defence, is, when the Aggreſſor, being *furniſhed* with Weapons for the Purpoſe, and *ſhewing* plainly a *Deſign* upon my Life, is got into a *Place* where he is very capable of doing me a Miſchief, allowing me ſome time, in which it may be neceſſary to prevent rather than be prevented; although in *foro humano* a little *Exceeding* be not much minded in regard of the great Diſturbance ſuch a Danger muſt be thought to raiſe in the Spirit of Man. And the *Space of Time* in which a Man may *uſe Force in his own Defence*, is ſo long as till the Aſſailant is either *repulſed*, or has *with-drawn* of his own accord, (whether in that Moment *repenting* of his wicked Deſign, or for that he ſees he is like to *miſs* of his Aim) ſo that for the preſent he cannot hurt us any more, and we have an Opportunity of retiring into a Place of Safety. * For as for *Revenge* of the Wrong done, and *Caution* for future Security, that belongs to the Care of the *Civil Magiſtrate*, and is to be done only by *his* Authority.

XIX. *Whether a Man may uſe his*

FARTHERMORE, both in a *State of Nature*, and in a *Civil State*, it is lawful for every Man to defend himſelf, if the *Precautions* beforementioned be taken againſt him who attempts

* *Grotius de Jure Belli & Pacis, Lib.* 2. *Cap.* 1. § 5.

to take away his Life; whether it be *designedly*, and with a *malicious Intention*, or *without any particular Design* against the Party assaulted: As suppose a Mad-man, or a Lunatick, or one that mistakes me for some other Person who is his Enemy, should make an Attempt on my Life, I may justifiably use my Right of *Self-Defence*; for the Person from whom the Attempt comes, whereby my Life is hazarded, hath no Right to attack me, and I am by no means obliged to suffer Death unnecessarily; on which account it is altogether unreasonable that I should prefer *his* Safety to *my own*.

Right of Self-defence against one that assaults him by mistake. L. N. N. l. 2. c. 5. § 5.

XX. *How the most just Self-defence ought to be managed: and of Duels.*

Nevertheless through true it is, that we ought not to take away another Man's *Life*, when it is possible for us after a more convenient way to avoid the Danger we are in; yet in consideration of that *great Perturbation of Mind*, which is wont to be occasion'd upon the Appearance of *imminent Mischief*, it is not usual to be *over-rigorous* in the Examination of these Matters; for it is not likely that a Man *trembling* under the *Apprehension* of Danger, should be able to find out so exactly all those *Ways of escaping*, which to one who *sedately* considers the Case may be plain enough. Hence, though it is *Rashness* for me to come out of a *safe* Hold to him who shall *challenge* me; yet, if another shall set upon me in an *open* Place, I am not streight obliged to betake my self to *Flight*, except there be at hand such a Place of *Refuge* as I may withdraw into without Peril: Neither am I always bound to *retire*; because then I turn my defenceless Back, and there may be hazard of falling; beside, that having once lost my Posture, I can hardly recover it again. But as the

the Plea of *Self-defence* is allow'd to that Person who shall thus encounter Danger, when he is going about his lawful *Business*, whereas if he had staid at Home he had been safe enough; so it is denied to him who being challenged to a *Duel*, shall by appearing *set himself* in that Condition, and except he kill his Adversary, himself must be slain. * For the *Laws* having *forbidden* his venturing into such *Danger*, any Excuse on account *thereof* is not to be regarded.

XXI. *Defence of Members.* L. N. N. l. 2. c. 5. § 10. WHAT may be done for the Defence of *Life* may also for the *Members*; so as that he shall be acquitted for an *honest Man* who shall *kill* a Ruffian, that perhaps had no farther Intention than to *maim* him, or give him some *grievous Wound*: For all Mankind does naturally abhor to be *maimed* or *wounded*; and the cutting off any, especially of the more noble Members, is often not of much less value than Life it self; beside, we are not sure beforehand, whether upon such *wounding* or *maiming* Death may not follow; and to endure this is a Sort of *Patience* that surpasses the ordinary Constancy of a Man, † to which no man is regularly obliged by the Laws, only to gratifie the outragious Humour of a Rogue.

XXII. *Defence of* MOREOVER, what is lawfully to be done for Preservation of *Life*, § is adjudged to be so for

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* See *Grotius de Jure Belli & Pacis, Lib.* 2. *Cap.* 1. § 15.

† See *Grotius de Jure Belli, & Pacis, Lib.* 2. *Cap.* 1. § 6.

§ Mr. *Budæus* denies this (in the 2d Part of his *Elements of Practical Philosophy, chap.* 4. *sect.* 3.) and his Reason is, That there is no *Proportion between the Life* *and*

for *Chastity*: Since there cannot be a more horrid *Abuse* offered to an honest Woman, than to force her out of that which being kept undefiled is esteemed the greatest *Glory* of her Sex; and to put upon her a Necessity of raising an Offspring to her Enemy out of her own Blood. *Chastiy.* L. N. N. l. 2. c. 5. § 11.

As for *Defence of Goods or Estate*, this may, among those who are in a State of *Natural Liberty*, go as far as the *Slaughter* of the Invader. † provided what is in Controversie be not a *Thing contemptible.* For without *Things necessary* we cannot keep our selves alive; and he equally declares himself my Enemy, who wrongfully seizes my *Estate*, as he that attemps upon my *Life.* But in *Communities*, where what is ravished from us may, with the Assistance of the *Civil Authority*, be recovered, this is not XXIII. *Defence of Goods or Estate.* L. N. N. l. 2. c. 5. § 16.

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and the Honour of any Person. But can any Violation be too great for a Woman to expect from a Man that is arriv'd to such a Pitch of Brutality? Besides, *Honour* is a *Good* whose Loss is not only irrecoverable, but which, among civiliz'd Nations, is placed in the same Degree of Value with Life it self. After all, does not such an Act of Hostility as this, give her a perfect Right to have recourse to Extremities against a Man, who to satisfie his brutish Passion, irreparably stains the Honour and takes away the Liberty of an honest Woman? See *Grotius de Jure Belli & Pacis, lib. 2. cap.* 1 § 7.

† The Author I just now quoted pretends in the same place, that *no one can justifiably kill a Thief, unless he attempts to steal from him so considerable a Part of his Substance, as that he could not live upon the Remainder.* But this learned Author has said nothing to invalidate the Principles, and confute the Reasons alledged to the contrary by our Author, in his large Work of *The Law of Nature and Nations*, of which this is an Abridgment. See *Lib.* 2. *Cap.* 5. § 16.

regularly allowed; unleſs in ſuch caſe when he that comes to take away what we have, cannot be brought to *Juſtice:* On which account it is, that we may lawfully kill *Highwaymen* and *Night-robbers.*

XXIV. *Self Defence in him that firſt injur'd.* L. N. N. l. 2. c. 6. § 19.

AND thus much for *Self-Defence* in thoſe who without Provocation are *unjuſtly invaded* by others: But for him who has *firſt* done an *Injury* to another, he can only then rightly *defend* himſelf with *Force,* and *hurt* the other *again,* when having *repented* of what he has done, he has offered *Reparation* of the Wrong and *Security* for the future; and yet he who was *firſt injured,* ſhall, out of ill Nature, *refuſe* the ſame, and endeavour to *revenge* himſelf by Violence; [ſhewing hereby that he ſeeks not ſo much *Reparation* and *Right* to himſelf, as *Miſchief* to the other.]

XXV. *Self Preſervation in Caſes of Neceſſity.* L. N. N. l. 2. c. 6.

LASTLY, *Self-Preſervation* is of ſo much regard, that, if it cannot otherwiſe be had, in many Caſes it exempts us from our Obedience to the ſtanding Laws; and on this Score it is, that *Neceſſity* is ſaid to *have no Law.* For ſeeing Man is naturally inſpired with ſuch an earneſt Deſire to preſerve himſelf, it can hardly be preſumed that there is any Obligation laid upon him, to which he is to ſacrifice his *own Safety.* For tho' not only *God,* but the *Civil Magiſtrate,* when the Neceſſity of Affairs requires it, may lay upon us ſo ſtrict an Injunction, that we ought rather to die than vary a Little from it; yet the *general Obligation* of Laws is not held to be ſo rigorous. For the Legiſlators, or thoſe who firſt introduced *Rules* for Mankind to act by, making it their Deſign to promote the *Safety* and *common Good* of Men, muſt regularly be ſuppoſed to have had before their Eyes the Condition

dition of *Human Nature*, and to have consider'd how *impossible* it is for a Man *not* to shun and keep off all Things that tend to his own *Destruction*. Hence those Laws especially, called *Positive*, and all *Human Institutions* are judged to except *Cases of Necessity*; or, not to oblige, when the Observation of them must be accompanied with some Evil which is *destructive* to *Human Nature*, or not tolerable to the *ordinary Constancy* of Men; unless it be *expresly* so ordered, or the *Nature* of the Thing requires, that even *that* also must be undergone. Not that Necessity *justifies* the Breach of a Law and Commission of Sin; but it is presumed, from the favourable Intention of the Legislators, and the Consideration of Man's Nature, that *Cases of Necessity* are not included in the general Words of a Law. This will be plain by an Instance or two.

(I.) THOUGH otherwise Man have no such Power over his own *Members*, as that he may lose or maim any of them at his pleasure; yet he is justifiable in *cutting off* a gangren'd Limb, in order to save the *whole Body*; or to preserve those *Parts* which are *sound*; or lest the other Members be rendred *useless* by a dead and cumbersome Piece of Flesh. XXVI. ***Cutting off Members.*** **L. N. N. l. 2. c. 6. § 3.**

(II.) IF in a *Shipwrack* more Men leap into the Boat than it is *capable* of carrying, and no one has more Right than another to it; they may *draw Lots* who shall be cast overboard; and if any Man shall *refuse* to take his chance, he may be thrown over without any more ado, as one that seeks the Destruction of *all*. XXVII. ***One lost to save many.***

(III.) IF *two* happen into imminent Danger of their Lives, where *both* must perish; one may, XXVIII. ***One has-***

tens the Death of another to save himself. L. N. N. l. 2. c. 6. § 4. may, as he sees good, hasten the Death of the other, that he may save *himself*. For instance, If I, who am a skilful Swimmer, should fall into some deep Water with another who could not swim at all, and he clings about me; I not being strong enough to carry *him* off and *my self* too, I may put him off with *force*, that I may not be drowned together with him; tho' I might for a little while be able to keep him up. So in a Shipwrack, if I have got a Plank which will not hold *two*, and *another* shall endeavour to get upon it, which if he does, we are *both* like to be drowned, I may keep him off with what *violence* I please. And so if *two* be pursued by an Enemy meaning to kill them, *one* may, by shutting a Gate or drawing a Bridge after him, secure *himself*, and leave the *other* in great Probability of *losing* his Life, supposing it not to be possible to save *both*.

XXIX. *Another destroyed or hurt to the same end.* (IV.) CASES also of *Necessity* may happen, where one may *indirectly* put another in Danger of *Death*, or some *great* Mischief, when at the same time he means no harm to the Person; but only, for his own *Preservation*, he is forced upon some Action which probably may do the other a Damage; always supposing that he had rather have chosen any *other* Way, if he could have found it, and that he make that Damage as *little* as he can. Thus, if a stronger Man than I pursues me to take away my Life, and one meets me in a narrow Way thro' which I must flee, if, upon my Request, he will not stand out of the Way, or he has not time or room so to do, I may throw him down and go over him, tho' it be very likely that by the Fall he will be very much hurt; except he should be one

who

who has such peculiar Relation to me, [suppose my *Parent, King,* &c.] that I ought for his Sake rather to surrender my self to the Danger. And if he who is in the Way cannot, upon my speaking to him, get out of the Way, suppose being lame or a Child, I shall be excused who try to leap over him, rather than to expose my self to my Enemy by delaying. But if any one shall, out of *Wantonness* or *cross Humour*, hinder me or deny to give me the Liberty of escaping, I may immediately by any Violence throw him down, or put him out of my Way. And those who in these Cases get any *Harm,* are to look upon it not as a *Fault* in the Person that did it, but as an unavoidable *Misfortune.*

(V.) If a Man, not through his own Fault, happen to be in *extreme Want of Victuals and Cloaths* necessary to preserve him from the Cold, and cannot procure them from those who are wealthy and have great Store, either by Intreaties, or by offering their Value, or by proposing to do Work equivalent; he may, without being chargeable with *Theft* or *Rapine,* furnish his Necessities out of their Abundance, either by force or secretly, especially if he do so with a Design to pay the Price as soon as he shall have an Opportunity. For it is the Duty of the *opulent* Person to succour another who is in such a *needy* Condition. And tho' regularly what depends upon *Courtesie* ought by no means to be extorted by *Force,* yet the *Extreme Necessity* alters the Case, and makes these Things as *claimable,* as if they were absolutely *due* by a formal Obligation. But it is first incumbent upon the Necessitous Person to try all Ways to supply his Wants with the *Consent* of the Owner, and he is to take care that the

XXX. *Case of extreme Want.* L. N. N. l. 2. c. 6. § 5.

the Owner be not thereby reduced to the *ſame Extremity*, nor in a little time like to be ſo; and that *Reſtitution* be made; * eſpecially if the Eſtate of the other be ſuch as that he cannot well bear the Loſs.

XXXI. *Deſtroying other Men's Goods to ſave our own.* L. N. N. l. 2. c. 6. § 8.

(VI.) LASTLY, the *Neceſſity* of our own Affairs ſeems ſometimes to juſtifie our deſtroying the *Goods of other Men*; 1. Provided ſtill, that we do not bring ſuch Neceſſity upon our ſelves by our *own Miſcarriage*: 2. That there cannot be any *better* Way found: 3. That we caſt not away that of our Neighbours which is of *greater Value*, in order to ſave our own which is of *leſs*: 4. That we be ready to pay the *Price*, if the Goods would not otherwiſe have been deſtroyed, or to bear our ſhare in the Damage done, if the Caſe were ſo that *his* muſt have periſhed together with *ours*, but now by the Loſs of them *ours* are preſerved. And this ſort of Equity is generally found in the *Law*-Merchant. Thus in caſe of *Fire*, I may pull down or blow up my Neighbour's Houſe, but then thoſe whoſe Houſes are by this means ſaved ought to make good the Damage proportionably.

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* See *Grotius de Jure Belli & Pacis*, [illegible] *cap.* 2. § 6. *lib.* 3. *cap.* 17. § 1, 2. *ſeq.*

CHAP.

CHAP. VI.

Of the Duty of one Man to another, and first of doing no Injury to any Man.

I. *Reciprocal Duties of two Sorts.*

WE come now to thoſe Duties which are to be practis'd by *one Man towards another*. Some of theſe proceed from that *common Obligation* which it hath pleas'd the Creator to lay upon all Men in general ; others take their Original from ſome certain *Human Inſtitutions*, or ſome *peculiar*, * *adventitious* or accidental *State* of Men. The *firſt* of theſe are *always* to be practis'd by *every* Man towards *all* Men ; the *latter* obtain only among thoſe who are in ſuch *peculiar* Condition or State. Hence thoſe may be called *Abſolute*, and theſe *Conditional Duties*.

II. *No wrong to be done.* L. N. N. l. 3. c. 1.

AMONG thoſe Duties we account *Abſolute*, or thoſe of every Man towards every Man, this has the firſt Place, † that *one do no Wrong to the other* ; and this is the *ampleſt* Duty of

* This *Status adventitius* is that State of Life we come into in conſequence of ſome Human Conſtitution ; whether we enter into it at our Birth immediately, or whether it happens after our Birth. Such are, for example, all thoſe Conditions of Life where the Duties and Relations are reciprocal ; ſuch as a *Parent* and his *Child*, an *Husband* and a *Wife*, a *Maſter* and a *Servant*, a *Sovereign* and his *Subject*, &c.

† See *Grotius de Jure Belli & Pacis, lib.* 2. and the whole 17th Chapter.

all

all, comprehending *all Men* as such; and it is at the same time the *most easy*, as consisting only in an *Omission* of acting, unless now and then when unreasonable Desires and Lusts are to be *curb'd*. It is also the *most necessary*, because without it *Human Society* cannot be preserv'd. For I can live *quietly* with him that does me *no Good*, or with whom I have no manner of Correspondence, provided he doth me *no Harm*. Nay this is all we desire from the *greatest Part* of Mankind; the doing mutually *good Offices* lying but among a few. But I can by no means live *peaceably* with him that *wrongs* me; Nature having instilled into every Man such a tender Love of *himself* and what is his *own*, that he cannot but by all possible means *repel* those Men who shall make any Attempt upon one or t'other.

III. *So to do a Crime.* BY this Duty are fenced not only what we have by the Bounty of *Nature*; such as our Laws, Bodies, Limbs, Chastity, Liberty; but whatsoever by any *Human Institution* or *Compact* becomes our Property; so as by this it is forbidden to take away, spoil, damage, or withdraw, in whole or in part, from our Use, whatsoever by a lawful Title we are possess'd of. Whence all those Actions are hereby made Crimes, by which any Wrong is done to others, as Murther, Wounding, Striking, Rapine, Theft, Fraud, Violence, whether practis'd directly or indirectly, mediately or immediately, and the like.

IV. *Reparation of* FARTHER, hence it follows, That *if any Harm or Damage be done to another, he who is truly chargeable as Author of the Wrong, ought,*

as

as far as in him lies, to make Reparation: For otherwise the Precept would be to no purpose, That no Man shall be hurt nor receive damage; if when he has actually sustain'd a Mischief, he must put it up quietly, and he who did the Injury shall enjoy *securely* the Fruit of his Violence without *Reparation.* And setting aside this *Necessity of Restitution,* the Pravity of Man's Nature is such, that they would never forbear *injuring* one another, and it would be very hard for him who has suffered Wrong, to compose his Mind so as to live peaceably with the other, till *Reparation* were made.

Wrong a necessary Consequence from thence.

V.

Damage how to be accounted. L. N. N. l. 3. c. 1. § 3.

THO' the Word *Damage* may seem properly to belong to Loss in Goods, yet we take it here in the large Sense, that it may signifie all Manner of *Harm, spoiling, diminishing,* or *taking away* what is already ours, or *intercepting* that which by an *absolute Right* we ought to have, whether it be bestowed upon us by Nature, or given us by Man and Human Laws; or lastly, the *Omission* or *Denial* of paying what by a *perfect Obligation* is due to us. But if *such* Payment only be stopt, as was *not due* by any *perfect Obligation,* it is not looked upon as a Damage that ought to be made good: For it would be [illegible] to account it a *Wrong* suffered if I receive not such Stipends; and unreasonable for me to demand as my *Right,* what I cannot expect from another but under the name of a *Free Gift,* and which I can by no means call *my own,* till after I have received it.

VI.

Damage in expectations.

UNDER the Head of *Damage* liable to Reparation, we must also comprise not only a Mischief, Loss or Interception of what is ours or due to us; but also such *Profits* as do naturally accrue

crue from the Thing, or have already accrued, or may fairly be *expected*, if it was the Right of the Owner to receive them; allowing ſtill the Expences neceſſary for gathering in ſuch Profits. Now the Value of *Profits*, thus in *Expectation* only, is to be high or low, according as they are certain or uncertain, and will be ſooner or later received. And laſtly, that alſo is to be called *Damage*, which upon a Hurt given, does of Natural Neceſſity *follow* thereon.

VII. *Damage mediately or immediately done.* L. N. N. l. 3. c. 1. § 4.

One Man may damnifie another not only *immediately* or by *himſelf*, but alſo by *others*: And it may happen that a Damage immediately done by *one Man* may be chargeable upon *another*, becauſe he contributed ſomewhat to the Action, either by doing what he ought not, or not doing what he ought to have done. Sometimes among *ſeveral Perſons* who concurred to the ſame Fact one is to be accounted the *Principal*, others but *Acceſſaries*; ſometimes they may all be *equally Parties*. Concerning whom it is to be obſerved, that they are ſo far obliged to *repair* the Wrong as they were indeed the *Cauſes* thereof, and by ſo much as they contributed to doing *All* or *Part* of the Damage. But where any one did not actually aſſiſt in the Treſpaſs committed; nor was antecedently a Cauſe of its being done, nor had any Advantage by it; there, though upon Occaſion of the Injury done, he may be *blame worthy*, yet he cannot be any ways obliged to *Reſtitution*: And of this Sort are ſuch as *rejoyce at* their Neighbour's Misfortunes, ſuch as *commend* the Commiſſion of Outrages, or are ready to *excuſe* them, who *wiſh* or *favour* the Practice of them, or who *flatter* the Actors therein.

Where

VIII. *Damage done by many.* L. N. N. l. 3. c. 1. § 5.

WHERE *many* have joined in an Action from whence Damage has come, he in the *first* place shall be chargeable with *Reparation*, by whose *Command* or powerful *Influence* the others were put upon the Action; and he who immediately perpetrates the Thing, to which he could not decline his helping Hand, shall be esteemed but only as the *Instrument*. He who *without any constraint* concerned himself in the Enterprize shall be *chiefly liable*, and then the rest who assisted in it. But this so, as that if *Restitution* be made by the former, then the latter are cleared, (which in *Penal Cases* is otherwise.) If *many in Combination* have committed an Injury, all are obliged for each one single, and each one single is obliged for all; so as that if *all* are seized, they must each pay their Shares to make good the Loss; and if all escape but *one*, he shall be obliged to pay for all; but where some amongst them are *insolvent*, those who are *able* must pay the Whole. If many, *not in Combination*, concur to the same Thing, and it can plainly be discerned *how much* each of them contributed to the doing of the Mischief; each shall only be accountable for so much as *himself* was the Cause of. But if *one shall pay* the whole, they are *discharged* for the same.

IX. *Damage by Negligence.* L. N. N. l. 3. c. 1. § 6.

NOT only he who out of an *evil Design* does wrong to another, is bound to Reparation of the Damage, but he who does so thro' *Negligence* or *Miscarriage*, which he might easily have avoided. For it is no inconsiderable Part of *social Duty*, to manage our Conversation with such *Caution* and *Prudence*, that it does not become *mischievous* and *intolerable* to others; in order to which, Men under some Circumstances and

and Relations, are obliged to more exact and watchful *diligence*: The slightest Default in this point is sufficient to impose the Necessity of *Reparation*; unless the Fault lay rather more in him who was harmed, than in him who did it; or unless some great Perturbation of Mind, or some Circumstance in the Matter, would not allow the most deliberate Circumspection; * as, when a Soldier in the Heat of Battle in handling his Arms shall hurt his Comrade.

X. *Damage by Chance.*

But he who by *meer Chance*, without any Fault of his own, shall do Harm to another, is not obliged to *Reparation*. Because nothing in this Case being done which can be chargeable upon him, † there is no Reason, why he who *unwillingly* did a Mischief should rather suffer, than he to whom it was done.

XI. *Damage by a Vassal.*

It is also agreeable to Natural Equity, if *my Vassal*, though not by my Desire, do Wrong to another, that either I make it good, or surrender *him* to the Party injured. For 'tis true, this *Vassal* is *naturally obliged* to Reparation; but he not having wherewith, and his Body being the *Property* of his Patron, it is but just that such Patron either *repair* the Loss sustained, or *deliver* him up. Otherwise such a Bond-man would be at liberty to do what Mischief he listed, if Amends cannot be had from *him*, because he is the Owner of nothing, no not of the Body he bears; nor from his *Patron*. For, let him beat the Slave never so severely, or punish him with the closest imprisonment,

* See *Grotius de Jure Belli & Pacis, lib.* 3. *c.* 1. § 4.
† See *Grotius de Jure Belli & Pacis, lib.* 3. *c.* 1. § 5.

that

that gives *no Restitution* to the Person wronged.

XII. *Damage by Cattle.* THE same seems to be just in the Case of our *Cattle* or any *living Creature* we keep, that, when they *against* our Wills and by a Motion of their own, contrary to their *Natures*, do a Mischief to another, we either make *Reparation*, or *give up* the same. For if I am hurt by any Animal that lives in its *Natural Liberty*, I have a Right, by what means I can, to give my self Satisfaction by *taking* or by *killing* it; and this Right doubtless cannot be taken away by its being in the Possession of another. And whereas the Owner of this Animal makes some *Gain* by it, but I have suffered *Loss* by the same; and whereas the *Reparation* of *Wrong* is more to be favoured than procuring *Gain*; it appears that I may with reason demand Satisfaction from the *Owner*, or if the Animal be not worth so much, then that *it* at least be delivered to me on Account of the Damage sustained.

XIII. *Recapitulation.* THUS then, he who without any *evil Intention* does an Injury to another, ought of his own accord to offer *Reparation*, and to protest himself to have done it *unwillingly*, lest the injured Person take him for his *Enemy*, and endeavour to *retaliate* the Mischief. But he, who with a *naughty design* shall wrong his Neighbour, is not only bound to offer *Reparation*, but to declare his *Repentance* for the Fact and to beg *Pardon*. On the other side, the *wronged Party* having Satisfaction made him, is obliged, upon the *Repentance* of the other, and at his *Request*, to grant him *Pardon*. For he that will not be content when *Reparation* is made him, and a

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fit *Submiſſion* offered, but ſtill ſeeks to revenge himſelf by Force, does nothing elſe but gratifie his own ill Nature, and ſo diſturbs the common Peace of Men without cauſe. And upon that account *Revenge* is by the *Law of Nature* condemned, as propoſing no other End, than doing Miſchief to thoſe who have hurt us, and pleaſing our ſelves in their Sufferings. Moreover, there is great Reaſon that Men ſhould be the more apt to pardon *each others* Offences, upon a conſideration how often themſelves tranſgreſs the *Laws of God*, and have therefore daily ſo much need of begging Forgiveneſs of *Him*. [Not ſtill but that the *Publick* may inflict a *Puniſhment* on the Aggreſſor, tho' he have given ſatisfaction to the *Private* Man, if the Act was *Criminal*, and in its Nature *Evil*.]

CHAP.

CHAP. VII.

The Natural Equality of Men to be acknowledged.

MAN is a Creature not only most sollicitous for the *Preservation* of Himself; but has of Himself also so nice an *Estimation* and *Value*, that to diminish any thing thereof does frequently move in him as great Indignation, as if a Mischief were done to his *Body* or *Estate*. Nay, there seems to him to be somewhat of *Dignity* in the Appellation of **Man**: so that the last and most efficacious Argument to curb the Arrogance of insulting Men, is usually, *I am not a Dog, but a Man as well as your self.* Since then Human Nature is the *same* in us all, and since no Man will or can cheerfully join in Society with any, by whom he is not at least to be esteemed equally as a Man, and as a Partaker of the same Common Nature: It follows that, among those *Duties which Men owe to each other*, this obtains the *second* Place, *That every Man esteem and treat another as* naturally *equal to himself, or as one who is a Man as well as he.* I. *Equality of Mankind.* L. N. N. l. 3. c. 2. § 1.

Now this *Equality* of Mankind does not alone consist in this, that Men of ripe Age have almost the same *Strength*, or if one be weaker, he may be able to kill the stronger, either by *Treachery*, or *Dexterity*, or by being better furnished with *Weapons*; but in this, that though Nature may have accomplished one Man be- II. *Wherein this Equality consists.* L. N. N. l. 3. c. 2. § 2.

yond another with various Endowments of Body and Mind; yet nevertheleſs he is obliged to an Obſervation of the *Precepts* of the *Law Natural* towards the meaner Perſon, after the ſame manner as *himſelf* expects the ſame from *others*; and has not therefore any greater Liberty given him to inſult upon his Fellows. As on the other ſide the Niggardlineſs of *Nature* or *Fortune* cannot of themſelves ſet any Man ſo low, as that he ſhall be in worſe Condition, as to the Enjoyment of *Common Right*, than others. But what *one Man* may rightfully demand or expect from *another*, the ſame is due to *others* alſo (Circumſtances being alike) from *him*; and whatſoever *one* ſhall deem reaſonable to be done by *others*, the like it is moſt juſt he practiſe *himſelf*: For *the Obligation of maintaining Sociality among Mankind equally binds every Man*; neither may one Man more than another violate the *Law of Nature* in any part. Not but that there are other *popular Reaſons* which illuſtrate this *Equality*; to wit, that we are all deſcended of the *ſame Stock*; that we are all born, nouriſhed, and die after the *ſame Manner*; and that God has not given any of us a *certain Aſſurance* that our happy Condition in the World ſhall not at one time or other be *changed*. Beſides, the Precepts of the Chriſtian Religion tell us that God favours not Man for his Nobility, Power, or Wealth, but for *ſincere Piety*, which may as well be found in a *mean* and *humble* Man, as in thoſe of *high degree*.

III. *This Equality ſhould make us* NOW from this *Equality* it follows, *That he who would uſe the Aſſiſtance of others in promoting his own Advantage, ought to be as free and ready to uſe his Power and Abilities for their Service, when*

when they want his Help and Assistance on the like occasions. For he who requires that other Men should do him Kindnesses, and expects *himself* to be *free* from doing the like, must be of opinion that those other Men are below himself and not his *Equals.* Hence as those Persons are the *best Members* of a Community, who without any difficulty *allow* the same things to their Neighbour that themselves *require* of him; so those are altogether *uncapable of Society,* who setting a high Rate on themselves in regard to others, will take upon them to act any thing towards their Neighbour, and expect greater Deference and more Respect than the Rest of Mankind; in this insolent manner demanding a greater portion unto themselves in those things, to which all Men having a common Right, they can in reason claim no larger a Share than other Men: Whence this also is an universal Duty of the *Law Natural, That no Man, who has not a peculiar Right, ought to arrogate more to himself, than he is ready to allow to his Fellows, but that he permit other Men to enjoy Equal Privileges with himself.*

benevolent, courteous and complaisant to each other. L. N. N. l. 3. c. 2. § 4.

IV. THE same *Equality* also shews what every Man's behaviour ought to be, when his business is to *distribute Justice* among others; to wit, *that he treat them as* Equals, *and indulge not that, unless the Merits of the Cause require it, to one, which he denies to another.* For if he do otherwise, he who is discountenanced is at the same time affronted and wronged, and loses somewhat of the Dignity which Nature bestowed upon him. Whence it follows, that Things which are in common, are of right to be *divided* by equal Parts among those who are equal: Where the

It ought to make us observe exact Justice in distributing to each his own. L. N. N. l. 3. c. 2. § 5.

the Thing will not admit of *Division,* they who are equally concerned, are to use it *indifferently* ; and, if the Quantity of the Thing will bear it, as *much* as each Party shall think fit : But if this cannot be allowed, then it is to be used after a *stated* manner, and *proportionate* to the Number of the Claimants ; because 'tis not possible to find out any other Way of observing *Equality.* But if it be a Thing of that nature as not to be capable of being *divided,* nor of being possest in *common,* then it must be used by *turns* ; and if this yet will not answer the point, and it is not possible the rest should be satisfied by an *Equivalent,* the best Way must be to determin Possession by *Lot* ; for in such Cases no fitter Method can be thought on, to remove all Opinion of Partiality and Contempt of any Party, without debasing the Person whom Fortune does not favour.

V. *This Equality a sufficient Remedy against Pride.* L. N. N. l. 3. c. 2. § 6.

THE Consideration of this *Natural Equality* among Men, ought to take from us all *Pride* ; a Vice that consists herein, When a Man, without any Reason, or, without sufficient Reason, prefers himself to others, behaving himself contemptuously and haughtily towards them, as being in his Esteem base Underlings, unworthy of his Consideration or Regard. We say, *without any Reason.* For where a Man is regularly possest of some *Right,* which gives him a Preference to other Men ; he may lawfully *make use of,* and *assert* the same, so it be without vain Ostentation and the Contempt of others ; as on the contrary every one is with good reason to *yield* that *Respect* and *Honour* which is *due* to *another.* But for the Rest, *true Generosity* has always for its Companion a *decorous Humility,* which

which arises from a Reflection on the Infirmity of our Nature, and the Faults, of which our selves either have been, or may hereafter be guilty, which are not less heinous than those which may be committed by other Men. The Inference we ought to make from hence is, that we do not over-value our selves with regard to others, considering that *they* equally with us are endowed with a *free Use of their Understanding*, which they are also capable of managing to as *good Purpose*; the *regular Use* whereof is that alone which a Man can call *his own*, and upon which the *true Value* of Himself depends. But for a Man, without any Reason, to set a high esteem upon himself, is a most *ridiculous Vice*; first, because 'tis in it self *silly*, for a Man to carry it high for nothing at all; and then, because I must suppose all *other Men* to be Coxcombs, if I expect from them a great Regard, when I deserve none.

VI. *And against rude unmannerly and contemptuous Behaviour.* L. N. N. *l.* 3. *c.* 3. § 7.

THE Violation of this Duty is yet carried farther, if a Man shew his *Contempt* of another by outward Signs, Actions, Words, Looks, or any other abusive way. And this Fault is therefore the more grievous, because it easily excites the Spirits of Men to Anger and Revenge: So that there are many who will rather venture their *Lives* upon the spot, much more will they break the Publick Peace, than put up an *Affront* of that nature; accounting that hereby their Honour is wounded, and a Slur is put upon their Reputation, in the untainted Preservation of which consists all their *Self-satisfaction* and *Pleasure* of Mind.

CHAP. VIII.

Of the mutual Duties of Humanity.

I. *Doing good to others.* L. N. N. l. 3. c. 3.

AMONG the Duties of one Man towards another, which must be practis'd for the sake of *Common Society*, we put in the *third* place this, *That every Man ought to promote the Good of another, as far as conveniently he may.* For all Mankind being by Nature made, as it were, *akin* to each other; such a Relation requires more than barely abstaining from offering Injury and doing Despight to others. It is not therefore sufficient that we neither hurt nor despise our Fellows, but we ought also to do such *good Offices* to others, or mutually to communicate the same, as that common *brotherly Love* may be kept up among Men. Now we become beneficial to our Neighbour, either *indefinitely* or *definitely*; and *that* either parting with *something* or *nothing* our selves.

II. *Benefactors of the first Sort.* L. N. N. l. 3. c. 3. § 2.

THAT Man *indefinitely* promotes the Good of others, who takes such necessary care of his *Mind* and *Body*, that he may be able to perform such Actions as may be profitable to his Neighbour; or who by the *Acuteness* of his *Wit* finds out something that may be of Advantage to Mankind. So that those are to be accounted guilty of a *Breach* of this Duty, who betaking themselves to no *honest Calling* spend their Lives in Sloth, as if their Souls were given them but to serve as Salt to keep their Bodies from stinking, or as if they were born but to make up a Number.

ber, and eat their Share: And such as, being *content* with the Estates their *Ancestors* have left 'em, think they may give themselves up to *Idleness* without blame, because they have whereon to live by the Industry of others: And those who *alone* enjoy what they have got, not bestowing any Part upon others: Finally, all those who, like Hogs, do Good to no one till they *die*; and all that Sort of Wretches who only serve to load the Earth with their useless Weight.

III. *Such deserve Honour as make themselves useful to the Publick.* L. N. N. l. 3. c. 3. § 3.

On the other side, to those who make it their Business to deserve well of Mankind, the Rest of the World *owe* thus much, that they don't envy 'em, nor lay any Rubs in their way, while by their noble Actions they seek the Universal Good: And if there be no Possibility for themselves to *imitate* 'em, they at least ought to pay a *Regard* to their *Memory* and promote their *Honour*, which perhaps is all they shall get by their Labours.

VI. *Good done to others without any charge or cost to the Benefactor.*

Now *not to do* readily all that *Good* to others which we can do without Detriment, Labour, or Trouble to our selves, is to be accounted detestable *Villany* and *Inhumanity*. The following are wont to be called *Benefits which cost nothing*, or which are of Advantage to the Receiver, without being a Charge to the Bestower. Such as, to allow the Use of the running Water; the letting another light his Fire by mine; the giving honest Advice to him that consults me; the friendly Directing a wandring Man to the right Way, and the like. So, if a Man have a mind to quit the Possession of a Thing, either because he has too much, or because the keeping of it becomes

troublesome, why should he not rather leave it fit for Use to others, (provided they are not Enemies) than to mar or destroy it? Hence it is a Sin for us to *spoil Victuals*, because our *Hunger* is satisfied; or to *stop up*, or cover a *Spring*, because we have quenched *our Thirst*, or to destroy *Buoys* set up to discover Shelves and Sands, or * *Mercuries* in Roads, when our selves have made use of them. Under this Head may be comprehended also the *little Alms* bestow'd by the Wealthy upon those who are in Want; and that *Kindness* which we justly shew to *Travellers*, especially if under Necessities, † and the like.

* Inscribed Posts set up in Highways to direct Travellers.

V. *Good done to others with an Expence to the Benefactor.* L. N. N. l. 3. c. 3. § 15.

But it is a higher Degree of Humanity, out of a singular Favour *to do a good Turn freely*, which costs either *Charge* or *Pains*, that so another may either have his Necessities relieved, or acquire some considerable Advantage. And these, by way of Excellence, are called *Benefits*, and are the fittest Matter for rendring Men Illustrious, if rightly tempered with Prudence and Magnanimity. The *Dispensation* of which, and the *Manner*, are to be regulated according to the *Condition* of the *Giver* and *Receiver*. Wherein Care is first of all to be taken; 1. *That the Bounty we are about to exercise do not* more Hurt *than* Good *to the Person to whom we design a Kindness, and to others*: Next, 2. *That our Bounty be not* greater *than consists with our Ability*: Then, 3. *That the* Worthiness *of Men be regarded in our Distri-*

† See *Grotius de Jure Belli & Pacis, lib.* 2. *cap.* 2. § 11, 12. *seq.*

bution,

bution, and Preference given to the Well-deserving. We must therefore consider *how far* each stands in need of our Help, and observe the Degrees of *Relation* among Men; moreover, 'tis to be observ'd *what* every one wants most, and what they can or cannot compass *with* or *without* our *Assistance.* * The *Manner* also of exercising Acts of Kindness will render them more acceptable, if they be done *chearfully, readily,* and *heartily.*

AND then he who *receives* a Benefit ought to have a *grateful Mind,* by which he is to make it manifest, that it was *acceptable* to him, and that for its sake he has a *hearty Respect* to the Donor, and that he wants nothing but an *Opportunity* or an *Ability* of making, if possible, a *Requital* of the full value or more. For it is not absolutely necessary that the Returns we make be *exactly tantamount* to the Courtesy we receive, but our *Good-will* and *hearty Endeavour* are in lieu to be accepted. Not but that sometimes he who pretends to have done me a Kindness, may, notwithstanding, have no Reason to say, he has *obliged* me thereby; as if a Man shall drag me out of the Water, into which he pushed me before; in such a Case I owe him no thanks. VI. *Gratitude.* L. N. N. l. 3. c. 3. § 6.

NOW by how much the more *Benefits* are apt to oblige and place Engagements on the Minds of Men, by so much ought the Party who is *beholden* to be the more eager to return his *Thanks.* If it be but because we ought not VII. *Thanks.*

* *Grotius de Jure Belli & Pacis, Lib.* 2. *Cap.* 5. § 10.

to

to suffer our Benefactor, who out of a good Opinion he had of us has done us a Kindness, to think worse of us; and because we should not receive any Favour, but with a Design to endeavour, that the Giver shall never have Cause to repent of what he has done for us. For, if for any particular Reason we are not willing to be beholden to such or such a Man, we may civilly *avoid* the Accepting of the *Courtesy.* And truly if no grateful Returns were to be made upon the Receipt of Benefits, it would be unreasonable for any Man to cast away what he has, and to do a good Turn where beforehand he is sure it will be slighted. By which means all Beneficence, Good-Will, and Brotherly-Love would be lost among Men; and there would be no such things as doing *Kindnesses frankly,* nor any Opportunities of procuring *mutual Friendships,* left in the World.

VIII. *Ingratitude.* L. N. N. l. 3. c. 3. § 17.

AND though the *ungrateful Man,* cannot be precisely said to do a *Wrong*; yet the Charge of *Ingratitude* is look'd upon as more base, more odious, and detestable than that of *Injustice*; because 'tis judged a Sign of an *abject* and *rascally Soul* for a Man to shew himself unworthy of the good Opinion, which another had entertain'd of his Probity, and not to be mov'd to some Sense of Humanity by *Benefits,* which have a Power to tame even the Brutes. But, let *Ingratitude* be never so abominable, yet simply considered, as it is a bare *Forgetting* of a Courtesy, and a *Neglect* of making a due Return upon occasion, Courts of Judicature take no cognizance of it; for it would lose the Name of *Bounty,* if it were

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redemandable by Law, as Money lent is; because then it would be a *Credit.* And whereas it is a high Instance of *Generosity* to be grateful, it would cease to be a *generous* Action, when so to do could not be avoided. Beside that it would take up the Business of all Courts, by reason of the great Difficulty in making an Estimate of all the Circumstances, which either would enhance or lessen the Benefit: And that it was to this End I bestow'd it, (to wit, that I did not therefore demand a Promise of Repayment,) that so the other might have an Occasion of shewing his Gratitude, not for Fear of Punishment, but out of Love to Honesty; and to manifest, that it was not in Hopes of Gain, but only out of mere Kindness that I was liberal of that, which I would not take care should be reimburs'd to me. But for him who improves his *Ingratitude*, and not only gives no thanks to, but injures his Benefactor; * this shall cause an *Aggravation* of his *Punishment*, because it plainly demonstrates the profligate Villany and Baseness of his Mind.

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* See *Grotius de Jure Belli & Pacis, Lib.* 2. *Cap.* 20. § 20.

CHAP.

CHAP. IX.

The Duty of Men in making Contracts.

I. *Contracts.* FROM the Duties *Absolute* to those that are *Conditional* we must take our *Passage*, as it were, through the *intermediate Contracts*; for, since all Duties, except those already mentioned, seem to presuppose some Covenant either expressed or implied; * we shall therefore in the next place treat of the *Nature of Contracts*, and what is to be observed by the Parties concerned therein.

II. *The Necessity of 'em.* Now it is plain that *it was absolutely necessary for Men to enter into mutual Contracts.* For though the Duties of *Humanity* diffuse themselves far and near thro' all the Instances of the Life of Man; yet *that* alone is not Ground sufficient, whereon to fix all the Obligations which may be necessary to be made *reciprocal* between one and another. For all Men are not endowed with so much Good Nature as that they will do all good Offices to every Man out of *meer Kindness*, except they have some certain Expectation of receiving the *like* again: And very often it happens, that the Services we would have to be done to us by *other Men* are of that Sort, that we cannot with *Modesty* desire them. Frequently also, it may not *become* one of my Fortune,

* Compare herewith the whole Eleventh Chapter of the Second Book of *Grotius de Jure*, &c.

or

or in my Station, to be *beholden* to another for ſuch a Thing. So that many times another cannot give, neither are we willing to accept, unleſs that other receive an *Equivalent* from us; and it happens not ſeldom, that my Neighbour *knows not* how he may be ſerviceable to my occaſions. Therefore, that theſe *mutual good Offices*, which are the Product of *Sociality*, may be more freely and regularly exerciſed, it was neceſſary that Men ſhould agree among themſelves, concerning what was to be done on this ſide and on that, which no Man from the *Law of Nature* alone could have aſſured himſelf of. So that it was beforehand to be adjuſted what, this Man doing *ſo* by his Neighbour, he was to expect *in lieu* of the ſame, and which he might lawfully *demand*. This is done by means of *Promiſes* and *Contracts*.

III. *Veracity.* L. N. N. l. 3. c. 4. § 2.

WITH reſpect to this general Duty it is an Obligation of the *Law of Nature*, that *every Man keep his Word*, or fulfil his Promiſes and make good his Contracts. For without this, a great Part of that Advantage, which naturally accrues to Mankind by a *mutual Communication* of good Offices and uſeful Things, would be loſt. And were not an exact Obſervance of one's Promiſe *abſolutely neceſſary*, no Man could propoſe to himſelf any *Certainty* in whatever he deſign'd, where he muſt depend upon the Aſſiſtances of *others*. Beſides that Breach of Faith is apt to give the juſteſt Occaſions to Quarrels and Wars. For if, according to my Agreement, I perform my Part, and the other falſifie his Word, whatſoever I have *done* or *depoſited* in Expectation of his Performance, is *loſt*. Nay, though I have done *nothing* as yet, yet it may be a Miſ-

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chief for me by this Disappointment to have my *Affairs* and *Purposes confounded*, which I could have taken care of some other way, if this Man had not offered himself. And there is no reason I should become ridiculous, only for having trusted one whom I took to be an honest and a good Man.

IV. *Distinction between what is due on Courtesy or Humanity, and what by particular Contract or Promise.* L. N. N. l. 3. c. 4.

But it is to be observed, that such Things as are due to me only of *Courtesie*, differ from those which I can claim on account of a *Contract* or *Promise*, in this respect chiefly: That, 'tis true, I may fairly desire the honest Performance of the *first*: But then, if the other shall neglect my Request, I can only charge him with *Rudeness*, *Cruelty* or *hard dealing*; but I cannot *compel* him to do me reason either by my own Power or by any superior Authority. Which I am at liberty to do in the *latter* Case, if that be not freely performed which ought to have been according to an *absolute Promise* or *Covenant*. * Hence we are said to have an *imperfect Right* to those things, but to these our Claim is *perfect*; as also that to the Performance of the *first* we lie under an *imperfect*, but to the *other* under a *perfect* Obligation.

V. *Obligations different.* L. N. N. l. 3. c. 5.

Our Word may be given, either by a *single Act*, where one Party only is obliged; or by an *Act reciprocal*, where more than one are Parties. For sometimes *one Man* only binds himself to do somewhat; sometimes *two* or *more* mutually engage each other to the Performance of such and such things. The former whereof is called a *Promise*, the latter a *Covenant* or *Contract*.

* See *Grotius de Jure Belli & Pacis. Lib.* 1. *cap.* 1. § 4. *seqq.*

PROMISE

PROMISES may be divided into *imperfect* and *perfect*. The former is, when we mean indeed to be obliged to make good our Word to him to whom we promise; but we intend not to give him a Power of *requiring* it, or of making use of force to compel us to it. As, if I say thus, I really design to do this or that for you, and I desire you'll believe me. Here I seem more obliged by the Rules of *Veracity* than of *Justice*; and shall rather appear to have done the promised Service out of a Regard to *Constancy* and *Discretion*, than to *Right*. Of this Sort are the Assurances of great Men who are in favour, whereby they *seriously*, but not upon their *Honours*, promise their Recommendation or Intercession, their Preferring a Man, or giving him their Vote, which yet they intend shall not be demanded of them as Matters of *Right*, but desire they may be wholly attributed to their *Courtesie* and *Veracity*; that the Service they do may be so much the more acceptable, as it was uncapable of *Compulsion*. VI. *Promises imperfect.* L. N. N. l. 3. c. 5. § 6.

BUT this is called a *perfect Promise*, when I not only oblige my self by my Word, but I give the other Party Authority to *require* at my hands the Performance of what I stipulated, as if 'twere a Debt. VII. *Promise perfect.*

MOREOVER, that *Promises* and *Contracts* may have a full Obligation upon us to *give* and to *do* somewhat, which before we were at liberty *not* to have done; or to *omit* that which we had a Power to *do*, 'tis especially requisite that they be made with our *free Consent*. For whereas the making good of any *Promise* or *Contract* may be accompanied with some *Inconvenience*, there can be no readier Argument why we should VIII. *No Obligation where the voluntary Consent of Parties is wanting.* L. N. N. l. 3. c. 6.

not *complain,* than that we *consented* thereto of our own accord, which it was in our power not to have done.

IX. *Consent express or tacit.* L. N. N. l. 3. c. 6. § 16. And this * *Consent* is usually made known by outward *Signs,* as, by *Speaking, Writing,* a *Nod,* or the like; tho' sometimes it may also be plainly intimated without any of them, according to the Nature of the thing and other Circumstances. So *Silence* in some Cases, and attended with some Circumstances, passes for a *Sign* expessing *Consent.* To this may be attributed those *tacit Contracts,* where we give not our formal Consent by the Signs generally made use of among Men; but the Nature of the Business, and other Circumstances make it fairly supposable. Thus frequently in the principal Contract, which is *express,* another is included which is *tacit,* the Nature of the Case so requiring: And it is usual, in most Covenants that are made, that some *tacit Exceptions* and *imply'd Conditions* must of necessity be understood.

X. *Who capable of giving Consent.* L. N. N. l. 3. c. 6. § 4. But to render a Man capable of giving a valid *Consent,* 'tis absolutely requisite, that he have so far the *Use of his Reason,* as fully to *understand* the Business that lies before him, and to know whether it be *meet* for him, and whether it lie in his *Power* to perform it; and having consider'd this, he must be capable of giving *sufficient* Indications of his *Consent.* Hence it follows, that the Contracts and Promises of *Ideots* and *Madmen* (except such whose Madness admits of lucid Intervals) are null and void: And the

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* See *Grotius de Jure Belli & Pacis, Lib.* II. *Cap.* 4. § 4. *Lib.* III. *c.* 1. §. 8. *c.* 24. §. 1, 2.

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ſame muſt be ſaid of thoſe of *Drunken Men*, if they are beſotted to that degree as that their Reaſon is overwhelm'd and ſtupify'd. For it can never be accounted a *real* and *deliberate Conſent*, if a Man, when his Brains are diſorder'd and intoxicated, ſhall on a ſudden and raſhly make foolish Engagements, and give the uſual Demonſtrations of Conſent, which at *another* time would have *obliged* him: and it would be a Piece of *Impudence* for any Man to exact the Performance of ſuch a Promiſe, eſpecially if it were of any conſiderable weight. But if one Man ſhall lay hold on the *Opportunity* of another's being drunk, and craftily making an *advantage* of his Eaſineſs of Temper under thoſe Circumſtances, ſhall procure any Promiſe from him, this Man is to be accounted guilty of a *Cheat* and *Knavery*: Not but that, if, after the Effects of his Drink are over, he ſhall *confirm* ſuch Promiſe, he ſhall be *obliged*; and this not with regard to what he ſaid when *drunk*, but to his Confirmation when *ſober*.

L. N. N. l. 3. c. 6. § 4.

XI. *Conſent in young Perſons.* L. N. N. l. 3. c. 6. § 5

As for *Conſent* in *young Perſons*, it is impoſſible for the *Laws Natural* to determine ſo nicely the *exact Time* how long Reaſon will be too weak in them to render 'em capable of making Engagements; becauſe Maturity of Diſcretion appears earlier in ſome than in others; Judgment therefore muſt be made hereof by the *daily Actions* of the *Perſon*. Though this is taken care for in moſt Commonwealths, by *Laws* preſcribing a certain *Term* of years to all in general; and in many Places it is become a commendable Cuſtom to ſet theſe under the *Guardianſhip* of wiſer Men, whoſe Authority muſt be

had to any Contracts they make, till the other's youthful Rashness be a little abated. For Persons of this Age, however perhaps they may well enough understand what they do, yet for the most part act with too much Vehemence and Rashness; are too free and easie in their Promises, eager and over confident in their Hopes, proud of being thought generous and liberal, ambitious and hasty in contracting Friendships, and not furnished with prudent Caution and necessary Diffidence. So that he can hardly pass for an *honest* Man, who makes any advantage of the *Easiness* of this Age, and would gain by the *Losses* of *young people*, who for want of Experience could not foresee, or place a true Estimate thereon.

XII. *Mistake in Contracts.* L. N. N. l. 3. c. 6. § 6.

ANOTHER Thing which invalidates *Consent*, and by consequence the Promises and Pacts that are built upon it, is *Errour* or Mistake; thro' which it comes to pass, that the Understanding is cheated in its Object, and the Will in its Choice and Approbation. Concerning *Error*, these three Rules are deligently to be observ'd. (1.) *That when to my Promise, some* Condition *is supposed, without the Consideration whereof I should not have made such Promise; the same shall, without the* other, *have no Obligation upon me.* For in this Case the Promiser does not engage *absolutely*, but upon a *Condition*, which not being made good, the Promise becomes null and void. (2.) * *If I am drawn into a Bargain*

* Provided this Error concerns something essential to the Bargain made; that is to say, that it does necessarily and naturally concern the Affair in hand, or respects

gain or Contract by a Mistake, *which Mistake I find, before as we use to say Bulk is broke, or any thing done in order to the Consummation thereof, it is but Equity that I should be at liberty to retract*; especially if upon the Contract making, I plainly signify'd for what *Reason* I agreed to it; more particularly, if the other Party suffers no *Damage* by my going off from my Bargain, or, if he does, that I am ready to make *Reparation.* But when, as was said afore, Bulk is broke, and the *Mistake* is not found till the Covenant is either wholly or in part already performed, the Party who is under an Errour cannot retract, any farther than the other shall of *Courtesy* release to him. (3.) *When a* Mistake *shall happen concerning the* Thing, *which is the* Subject *of the Contract, such Contract is in-*

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spects plainly the Intention of those who contract, notified sufficiently at such time as the Contract was made: And on both Sides allowed as a Reason without which such Contract had never been made; otherwise, as the Errour had no Influence on the Contract to be made, so can it not disannul it when made, whether it be executed or not. An Example will make the meaning hereof plain. Suppose I imagin that I have lost my Horse, and that I shall never recover him again; and buy another, which otherwise I wou'dn't have done: If I happen afterwards, contrary to Expectation, to find my own again, I can't oblige the Person I bought the new one from to take it again, altho' at that time he shou'dn't have sent me the Horse, or have receiv'd the money agreed for: Unless when we bargain'd, I had expresly and formally made this a Condition of annulling such Agreement: For without such formal Stipulation, the Agreement stands good against me, altho' I might (in way of Discourse only) mention, that I would not have bought this Horse, had I not lost my other. See *L. N. N. lib.* 3. *c.* 6. § 7. See also *Grotius de Jure Belli & Pacis, lib.* 3. *cap.* 23. §4.

 valid,

valid, not for the sake of the Mistake, but because the Laws and Terms of the Agreement are not really fulfilled. For in Bargains of this nature, the *Thing* and all its *Qualifications* ought to be known, without which Knowledge a fair Agreement cannot be supposed to be made. So that he who is like to suffer Wrong by any Defect therein, either may throw up his Bargain, or force the other to make the Thing as it should be, or else to pay him the Value, if it happen'd through his Knavery or Negligence.

XIII. *Guileful Contracts.* I. N. N l. 3. c. 6. § 8. But if a Man be drawn into a Promise or Bargain by the *Craft* and *fraudulent* Means of another; then the Matter is thus to be considered. (1.) *If a third Man were guilty of the Cheat, and the Party with whom the Bargain is driven was not concerned in it, the Agreement will be valid:* But we may demand of him who practis'd the Knavery, so much as we are Losers by being deceiv'd. (2.) *He who knavishly procures me to promise or contract with him, shall not set me under any Obligation.* (3.) *If a Man will indeed come freely with a plain* * Design *to drive a Bargain, but in the very* Action *shall perceive a Trick put upon him; suppose in the* Thing *bargain'd for, its Qualities or Value; the Contract shall be so far naught, as to leave it in the Power of him who is deceiv'd, either to relinquish his Bargain, or to require Satisfaction for his Loss.* (4.) *If unfair Dealing chance to be us'd in some things not* essential *to the Business, and which*

* See *Grotius de Jure Belli & Pacis, Lib. 2. cap.* 17. § 17

were

were not exprefsly under regard, *this weakens not the Agreement, if, for the* reft, *it be regularly made*; tho' perhaps *one Party* might have a Secret and fly Refpect to fome fuch thing, at the very time of driving the Bargain, and cunningly conceal'd fuch his View till the Contract were perfectly tranfacted.

WHENSOEVER *Fear* is to be confider'd in Promifes or Bargains, it is two-fold, and may either be call'd a *probable Sufpicion* left we fhould be deceiv'd by another, and this becaufe he is one who is very much addicted to unjuft Practices, or has fufficiently intimated his fraudulent Defign; or elfe a *panic Terror of the Mind*, arifing from fome grievous Mifchief threatned, except we make fuch a Promife or Contract. Concerning the firft Sort of *Fear*, (or *Miftruft* rather) thefe Things are to be obferv'd. (1.) *He who trufts the Engagements of one who is* notorioufly negligent *of his Word and Troth, acts very imprudently; but, for that Reafon only can have no Remedy, but fhall be obliged.* (2.) *When a Bargain is fully made and compleated, and a Man hath no new Reafons to apprehend any knavifh Defigns from the other Party, it fhall not be fufficient to invalidate the Agreement that the other was, on other Occafions before this Agreement, known to have been trickifh and deceitful.* For fince our Knowledge of fuch his former Behaviour did not prevent our making the Agreement with him, it ought not to prevent our making it good to him. (3.) *Where* after *the Bargain made, it appears plainly that the other Perfon intends to elude* his *Part of the Contract, as foon as I have perform'd* mine; *here I cannot*

XIV. *Contracts fufpicious.* L. N. N. l. 3. c. 6. § 9.

cannot be forced to comply first, *till I am secure of a Performance on the other side.*

XV. *Contracts thro' Fear.* L. N. N. l. 3. c. 7. § 11.

As for the other Sort of *Fear,* these Rules are to be observ'd. (1.) *If a Man has taken an Obligation upon him, thro' Fear of Mischief threatned by a* third *Person, neither at the Instigation, nor with the Confederacy of the Party to whom the Engagement was made, he stands firmly bound to perform what he promis'd.* For there appears no Fault in him to whom the Promise was made, which can render him uncapable of acquiring a Right to the Performance of it; on the contrary, he may justly challenge a Requital, in that he lent his Assistance to the other, in warding off the Danger he apprehended from the *third* Person. (2.) *All such* Covenants *that are made out of* Fear *or* Reverence *of our lawful Superiours, or by the* Awe *we have for those to whom we are very much beholden, shall be firm and good.* (3.) *Those* Bargains *which are* wrongfully *and* forcibly *extorted from a Man by the Person to whom the Promise or Agreement is made, are invalid,* For the *Violence* he unjustly uses to set me under that *Fear,* renders him uncapable of pretending to any Right against me on account of such Action of mine. And whereas in all other Cases, every Man is bound to Reparation of what Wrong he shall do to another: this * Restitution to which he is bound is understood as it were to take off any

* There was no need to have recourse to this Duty of Restitution, thereby to shew the Invalidity of such Contracts. For the want of Liberty in the Person promising, and the want of Capacity in the Person obtaining by force the Promise, of creating to himself thereby any Right to the Thing promised, are sufficient to shew the plain Nullity of the Agreement thus obtained.

Obligation

Obligation from such Promise, since if what was promised were paid, it ought to be immediately restored.

XVI. *Consent mutual.* L. N. N. l. 3. c. 6. § 15.

Moreover not only in Contracts, but in Promises the *Consent* ought to be *reciprocal*; that is, both the Promiser and he to whom the Promise is made must agree in the Thing. For if the latter shall not *consent*, or refuse to *accept* of what is offered, the thing promised remains still in the Power of the Promiser. For he that makes an *offer* of any thing, cannot be supposed to intend to *force* it upon one that is *unwilling* to receive it, nor yet to *quit* his own Title to it; therefore when the othe *denies* Acceptance, he who proffered it loses nothing of his Claim thereto. If the Promise was occasion'd by a *Request* before made, the same shall be accounted to oblige so long, as till such Request be expresly *revok'd*; for in that case the thing will be understood to be *accepted beforehand*; provided yet that what is offer'd be proportion'd to what was desired. For if it be not, then an *express Acceptance* is requisite; because it may often do me no good to answer my Request by halves.

XVII. *Impossible Engagements.* L. N. N. l. 3. c. 7.

As for the *Matter* of our Promises and Contracts, it is absolutely necessary, that what we promise, or make a Bargain for, be *in our Power* to make good, and that so to do be not prohibited by any Law; otherwise we engage our selves either *foolishly* or *wickedly*. Hence it follows that *no Man is obliged to do Things impossible.* But if it be a Thing which at the time of the Bargain making was possible, and yet afterwards by some Accident, without any Fault of the Contracter, became altogether impossible, the Contract shall be null, if there be nothing

thing as yet done in it; but if one Party have perform'd ſomewhat towards it, what he has advanced is to be reſtor'd to him, or an Equivalent given; and if this cannot be done, by all means it is to be endeavour'd that he ſuffer no loſs thereby. For in Contracts that is principally to be regarded which was *expreſsly* in the Bargain; if this cannot be obtain'd, it muſt ſuffice to give an *Equivalent*; but if neither can this be had, at leaſt the *utmoſt Care* is to be taken that the Party undergo no Damage. But where any Man ſhall *deſignedly*, or by ſome very *blameable Miſcarriage*, render himſelf uncapable of making good his Part of the Bargain, he is not only obliged to uſe his utmoſt Endeavour, but ought alſo to be *puniſh'd*, as it were, to make up the amends.

XVIII. *Unlawful Engagements.* L. N. N. l. 3. c. 7. § 6, 7.

IT is alſo manifeſt, that we cannot ſet our ſelves under any Obligation to perform what is *unlawful*. For no Man can engage himſelf farther than he hath *lawful Authority* ſo to do. But that Legiſlator who prohibits any Action by a Law takes away all legal Power of undertaking it, and diſables any Man from obliging himſelf to perform it. For it would imply a Contradiction, to ſuppoſe, that from a Duty enjoyn'd by the Laws ſhould ariſe an Obligation to do that which the ſame Laws forbid to be done. So that he tranſgreſſes who promiſes to do what is unlawful, but he is doubly a Tranſgreſſor who performs it. Hence alſo it follows, that neither are thoſe Promiſes to be kept, the Obſervation of which will be *miſchievous* to him to whom they are made; becauſe it is forbidden by the *Law-Natural* to do hurt to any Man, even though he do fooliſhly deſire it. And if a

Contract

Contract be made to do some *filthy* and *base* Thing, neither shall be obliged to fulfil it. If such filthy Thing be done by one Party pursuant to the Bargain, the other shall not be bound to give the Reward agreed for ; *but if any thing be already given on that account, it cannot be demanded again.

XIX. *Engagements concerning other men,* L. N. N. l. 3. c. 7. § 10.

And then, it is plain, that such Engagements and Bargains as we shall make of what belongs to other Men are altogether insignificant, so far as they are not ours, but subject to the Will and Direction of others. But if I promise thus ; *I will use my Endeavour that such a Man* (always supposing him to be one not absolutely under my Command) *shall do so or no :* Then I am obliged by all methods morally possible, (that is, so far as the other can fairly request of me, and as will consist with Civility) to take pains to move that Person to perform what is desired. Nay we cannot promise to a third Man *Things* in our own possession, or *Actions* to be done by our selves, to which another has acquir'd a Right, unless it be so order'd, as not to be in force till the time of that other's Claim is *expir'd.* For he who by *antecedent* Pacts or Promises has already transferr'd his Right to another, has no more such Right left to pass over to a *third* Person : And all manner of *Engagements* and *Bargains* would be easily eluded, if a Man after having contracted with one, might be at liberty to enter a Treaty with another, wherein

* This determination seems not altogether just, because he who had parted with his Goods, had parted with them by an act invalid and of no effect. See *L. N. N. l.* 3. c. 7. § 9.

Dispo-

Disposals should be made contrary to the *first* Agreement, and with which it is impossible *this* should consist. Which gives foundation to that known Rule, *First in Time, prior in Right.*

XX. *Conditions various* L. N. N. l. 3. c. 8. § 1. BESIDE all which it is to be chiefly observ'd concerning Promises, that they are wont to be made *positively* and *absolutely*; or *conditionally*, that is, when the Validity thereof lies upon some *Event* depending on Chance or the Will of Man.

NOW *Conditions* are either *possible* or *impossible*; and the former are subdivided into *Casual* or fortuitous, which *we* cannot cause to be or not to be; or *Arbitrary*, or such as are in the Power of him to whom the Promise is made, that they are or are not comply'd with; or else *Mixt*, the fulfilling of which depends partly on the Will of the Person receiving the Promise, and partly on Chance.

Impossible Conditions are either such as are *naturally* or *morally* so, that is, some Matters by the Nature of Things *cannot* be done; others by the Direction of the Laws *ought not* to be done. Such Conditions then as these being annex'd, do, according to the plain and simple Construction of the Words, render the Promise *Negative*, and therefore null; tho' it is true it may be so provided by Law, that if to Affairs of great Concernment any such *impossible Conditions* should be annex'd the Agreement may remain good, rejecting these Conditions as if they had never been made; that so Men may not have busied themselves about that which otherwise can signifie nothing.

XXI. *Mediatory* LASTLY, we promise and contract, not only in our *own Persons*, but oftentimes by the

Mediation

Mediation of other Men, whom we conſtitute the *Bearers* and *Interpreters* of our Intentions; by whoſe Negociations, if they deal faithfully by us in following the Inſtructions we gave, we are firmly obliged to thoſe Perſons who tranſacted with them as our Deputies. *Contracts.* L. N. N. l. 3. c. 9. § 1.

XXII. *Concluſion.* AND thus we have done with the *Abſolute* Duties of Man, by which, as it were, we naturally paſs to the *Conditional* Duties of Men. And theſe do all preſuppoſe ſome Human Inſtitution, founded upon an *Univerſal Agreement*, and ſo introduced into the World, or elſe ſome peculiar State or Condition. And of this Sort of Inſtitutions, there are three chiefly to be inſiſted on, to wit, *Speech* or *Diſcourſe*, *Property* and the *Value* of Things, and the *Government* of Mankind. Of each of theſe, and of the Duties ariſing therefrom we ſhall next diſcourſe.

CHAP.

CHAP. X.

The Duty of Men in Discourse.

I *General Rule. To deceive no one by any means established to express our Thoughts.*

HOW useful and altogether necessary an Instrument of Human Society *Discourse* is, there is no Man can be ignorant; since many have made that only an Argument to prove Man to be by Nature design'd for a *Social Life.* Now that a *lawful* and *beneficial Use* may be made hereof for the Good of the same Human Society, the *Law of Nature* has given Men this for a Duty, *That no Man deceive another either by Discourse, or any other Signs which customarily are accepted to express our inward Meaning.*

II. *Uniform Signification of Words.* L. N. N. l. 4. c. 1.

BUT that the Nature of *Discourse* may be more throughly understood, it must first be known, that there is a two-fold Obligation respecting *Discourse,* whether exprest with the Voice, or written in *Characters.* The first is, that those who make use of the *same Language,* are obliged to apply such certain *Words* to such certain *Things,* according as Custom has made them to signify in each Language. For since neither any *Words* nor any particular *Strokes* form'd into *Letters* can *naturally* denote any certain *Thing* (otherwise all Languages and Characters for writing would be the same; and hence the Use of the Tongue would be to no purpose if every Man might call every *Thing* by what *Name* he pleas'd;) it is absolutely necessary among those who speak the same Language, that there be a *tacit Agreement* among them, that this certain Thing shall be so, or so call'd, and not otherwise. So that unless

an

an *uniform Application* of *Words* be agreed upon, 'twill be impossible for one Man to gather the Meaning of another from his Talk. By virtue then of this *tacit Compact*, every Man is bound in his common Discourse to apply his Words to *that Sense*, which agrees with the *receiv'd Signification* thereof in that Language: From whence also it follows, that albeit a Man's *Sentiments* may differ from what he expresses in Words, yet in the Affairs of Human Life he must be look'd upon as *intending* what he *says*, tho', as was said, perhaps his inward Meaning be the clear contrary. For since we cannot be inform'd of another's *Mind* otherwise than by outward *Signs*, all Use of Discourse would be to no purpose, if by *mental Reservations*, which any Man may form as he lists, it might be in his power to elude what he had declar'd by Signs usually accepted to that end.

III. *Discourse to be plain.* L. N. N. l. 4. c. 1. § 6.

THE other Obligation which concerns *Discourse*, consists in this, that every Man ought by his *Words* so to express to another his *Meaning*, that he may be plainly understood. Not but that it is in a Man's power to be *silent*, as well as to *speak*; and whereas no Man is bound to tell every one all that he bears in his Mind; it is necessary that there be some *peculiar Obligation* that shall engage him first to speak, and then so to speak as that another shall fully understand his Meaning. Such Obligation may arise from a *particular Compact*, or some *common Precept of the Law Natural*, or from the *Nature of the present Affair*, in which Speech is made use of: For oftentimes a *Bargain* is made expresly with a Man, that he shall disclose to me all that he knows in some

Matter;

Matter; as ſuppoſe I deſired to be inſtructed in any Science: Frequently alſo I may be *commanded* by ſome Precept of the *Law of Nature* to communicate my Skill to another, that by this Means I may be helpful to him, or that I may ſave him from Miſchief, or that I may not give him ſome Cauſe or Occaſion of receiving a Harm: And laſtly, the *preſent Caſe* may require me to declare my Opinion in a Matter wherein another is concerned; as it often happens in Contracts of the greateſt Importance.

IV. *Silence.* L. N. N. *l.* 4. *c.* 1. § 7.

BUT becauſe it cannot *always* happen, that upon any of theſe Heads I am *obliged* to ſignify my Thoughts upon any Matter, it is plain that I am not bound to diſcloſe in Words any more than another has a *Right* either *perfect* or *imperfect* to require. So that I may, by holding my Tongue, lawfully conceal what he has no juſt Claim to the Knowledge of, or to the Diſcovery whereof I lie under no Obligation, however earneſtly it be deſir'd.

V. *Counterfeit Diſcourſe.*

NAY, ſince *Speech* was not only ordain'd for the Uſe of *others*, but *our own* Benefit alſo; therefore whenſoever my private Intereſt is concern'd, and it occaſions Damage to no Body elſe, I may ſo order my Words, that they may communicate a Senſe different from that which I bear in my Mind.

VI. *Figurative Speech.*

LASTLY, becauſe oftentimes thoſe to whom we talk upon ſome Matters may be ſo diſpoſed, that from a *downright* and *plain Diſcourſe* they would perceive the true State of the Caſe, which ought rather to be *conceal'd*, becauſe a full Knowledge would not procure the good End we drive at, but be a *Detriment* to 'em; we

we may in ſuch Caſes uſe a *figurative* or *ſhadow'd* way of *Speech*, which ſhall not directly repreſent our Meaning and plain Senſe to the Hearers. For he who would and ought to benefit another, cannot be bound to attempt it after ſuch a manner, as ſhall incapacitate him from obtaining his End.

FROM what has been ſaid may be gather'd wherein that *Verity* conſiſts, for their Regard to which good Men are ſo much celebrated; to wit, that our *Words* do fitly repreſent our *Meaning* to any other Perſon who *ought* to underſtand 'em, and which it is our *Duty* to *expreſs plainly* to him, either by a perfect or imperfect Obligation; and this to the end either that he upon knowing our Minds may make to himſelf ſome Benefit thereby, or that he may avoid ſome undeſerv'd Evil, which he would incur upon a wrong Underſtanding of the Caſe. Hence by the Bye it is manifeſt, that it is not always to be accounted *Lying*, when even for the nonce a Tale is told concerning any Thing in ſuch a manner as does not exactly quadrate with the Thing it ſelf, nor with our own Opinion of it; and conſequently, that the Congruity of *Words* with *Things*, which conſtitutes the *Logical* Verity, is not in all Points the ſame with *Moral Truth*. VII. *Verity.* L. N. N. l. 4. c. 1. § 8.

ON the contrary that is rightly call'd a *Lye*, when our Words bear a different Signification from that which we think in our Minds, whereas the Perſon to whom we direct our Diſcourſe has a *Right* to underſtand the Thing as it *really* is, and we are under an *Obligation* of making our Meaning *plain* to him. VIII. *A Lye.*

FROM

IX. *Innocent Untruths.* L. N. N. l. 4. c. 1. § 11.

FROM what is said it appears, * that those are by no Means chargeable with *Lying*, who entertain *Children* or the like with Fables and fictitious Discourses for their better Information, they being suppos'd uncapable of the naked Truth. As neither are those who make Use of a *feign'd Story* to some *good End*, which could not be attain'd by speaking the *plain Truth*; suppose, to protect an Innocent, to appease an angry Man, to comfort one who is in Sorrow, to encourage the Fearful, to persuade a nauseating Patient to take his Physick, to soften the Obstinate, or to divert the evil Intention of another, and the like; or, if the Secrets and Resolutions of a Community are to be kept from publick Knowledge, we may raise false Rumours in order to conceal 'em, and to mislead the importunate Curiosity of others; or, if we have an Enemy, whom by open Force we cannot Annoy, we may, by way of Stratagem, make Use of any lying Tales to do him Mischief.

X. *Equivocation and mental Reservation.* L. N. N. l. 4. c. 1. § 14.

ON the other side, if any Man be *bound* in Duty to signifie *plainly* his *true Meaning* to another, he is not without Blame, if he discover only a *part* of the Truth, or amuse him with *ambiguous* Discourse, or use some *mental Reservation* not allow'd in the common Conversation of Men.

* See *Grotius de Jure Belli, &c. lib. 3. cap. 1. § 9. seqq.*

CHAP.

CHAP. XI.

The Duty of those which take an Oath.

ALL Men agree in the Opinion, That an *Oath* gives a great additional Confirmation to all our Assertions, and to those Actions which depend upon our Discourse. An *Oath* is, * *A Religious Asseveration, by which we disavow the Divine Clemency, or imprecate to our selves the Wrath of God if we speak not the Truth.* Now when an All-wise and an Almighty *Witness* and *Guaranty* is invok'd, it causes a strong Presumption of the Truth, because no Man can easily be thought so Wicked, as to dare rashly to call down upon himself the grievous Indignation of the Deity. Hence it is the Duty of those that take an Oath, *To take the same with awful Reverence, and religiously to observe what they have sworn.*

I. *An Oath.* L. N. N. l. 4. c. 2.

Now the *End* and *Use* of an Oath is chiefly this, To oblige Men the more firmly to speak the Truth, or to make good their Promises and Contracts out of an Awe of the Divine Being, who is infinitely Wise and Powerful; whose Vengeance they imprecate to themselves when they Swear, if they wittingly are guilty of Deceit; whereas otherwise the Fear of what *Men* can do may not be sufficient; because pos-

II. *The End and Use.*

* Compare herewith the whole 13th *Chapter* of the 2d Book of *Grotius de Jure*, &c.

K sibly

ſibly they may have Hope to oppoſe or eſcape their Power, or to beguile their Underſtandings.

III. *Swearing by what.* L. N. N. l. 4. c. 2. § 3.

SINCE GOD alone is of infinite Knowledge and of infinite Power, it is a manifeſt Abſurdity to ſwear by any other Name but the Name of GOD only; that is, in ſuch a Senſe, as to invoke it for a Witneſs to our Speech, and for an Avenger of our Perjury: But if in the Form of Oaths any other Things, that we hold Dear, or have in Veneration or Eſteem, be mention'd, it is not to be underſtood that ſuch Things are invok'd as Witneſſes to our Truth or Avengers of our Falſehood; but GOD only is herein invok'd, with a Deſire, that if we ſwear falſely, he would be pleas'd to puniſh our Crime, in theſe Things eſpecially for which we are moſt nearly and tenderly concern'd.

IV. *Forms how to be accommodated.* L. N. N. l. 4. c. 2. § 4.

IN Oaths the *Form* which is preſcrib'd, (by which the Perſon ſwearing invokes GOD as a Witneſs and an Avenger,) is to be *accommodated to the Religion of the ſaid Swearer*; that is, to that Perſuaſion and Opinion of GOD which he is of. For 'tis to no Purpoſe to make a Man ſwear by a God, whom he does not *believe*, and conſequently does not *fear*. But no Man ſuppoſes himſelf to take an Oath in any other Form, nor under any other Notion, than that which is conſonant to the Precepts of *his Religion*, which, in his Opinion, is the *true*. Hence alſo it is, that he who ſwears by *falſe Gods*, which yet himſelf takes to be true ones, ſtands obliged, and if he falſifies is really guilty of Perjury; becauſe whatever his peculiar Notions were, he certainly had ſome Senſe of the Deity before his Eyes; and therefore by wilfully forſwearing himſelf he violated, as far as he

was

was able, that Awe and Reverence which he ow'd to Almighty GOD.

THAT an Oath may be *binding*, 'tis necessary it be taken with *deliberate Thoughts*, and a *real Design*: Whence he shall not be obliged by an Oath who meerly *recites* it; or speaking in the *first Person*, dictates the concept formal Words thereof to another who is to say after him. But he who shall *seriously* behave himself as one that is about to *swear solemnly*, shall be obliged, whatsoever *mental Reservations* he all the while may harbour in his Mind. For otherwise all Oaths, nay, all Methods of mutual Obligation by the Intervention of the plainest Significations would be of no Use to human Life, if any Man by his *tacit Intention* could hinder such an Act from obtaining such an Effect as it was first instituted to produce.

V. *Deliberation necessary.* L. N. N. l. 4. c. 2. § 5.

WE ought likewise carefully to observe, that Oaths do not of themselves produce a new and peculiar Obligation, but are only apply'd as an *Accessional Strength*, and an additional Bond to an *Obligation*, in its nature valid before. For whenever we swear, we always suppose some Matter, upon non-performance of which we thus imprecate the Vengeance of Heaven. But now this would be to no purpose, unless the Omission of the Thing suppos'd had been before unlawful, and consequently, unless we had before been obliged. Tho' indeed it frequently happens, that we comprehend in one Speech, both the *principal Obligation* and the *additional Bond* of the Oath; as thus, *As God help me, I'll give you a hundred Pounds.* Where the Oath is not superfluous, albeit 'tis added to a Promise that might have been valid of it self.

VI. *Oaths how obliging.* L. N. N. l. 4. c. 2. § 6.

Because tho' every good Man believes a bare Promise to oblige, yet 'tis look'd upon to be the more firm when 'tis reinforced with an Imprecation of Vengeance from above upon a Failure. Hence it follows, that any Acts which were before attended with some inward *Flaw*, hindring any Obligation to arise from them, cannot be made obligatory by the Accession of an Oath; as neither can a *subsequent* Oath avoid a *former legitimate Engagement*, or annul that Right which *another* may claim thereby; thus a Man would swear in vain not to pay another Person what is justly due to him: Nor will an Oath be of any Validity, where it appears, that 'twas made by the Juror upon *Supposition* of a Thing to be done which was not *really so*; and that he would not have so sworn, had not he *believ'd* it to be done; especially if he were *cajol'd* into such his Error by the *Craft* of him to whom the Oath was made: * Neither shall he, who by setting me under *panick Fear* forces me to take an Oath, have any good Title to require my Performance. Farthermore, an Oath shall have no Obligation upon me to do any *unlawful Act*, or to *omit* the performing any *Duty* enjoyn'd by the Laws of God or Man. Lastly, an Oath cannot *alter* the Nature or Substance of the Contract or Promise to which it is annex'd: Hence it cannot oblige to *Impossibilities*. Again, a *Conditional* Promise, by the Addition of an Oath, is not changed into a *Positive* and *Absolute* Promise: In like manner, it is no less requisite to Promises confirm'd by Oaths, than to others

* *Grotius de Jure Belli & Pacis, Lib.* 3. *cap.* 19. § 5.

which

which are not so confirm'd, that they be accepted by the other Party: So that he who obtains a Right by any Covenant, may equally release the Performance of it, whether it was sworn to or not.

BUT the taking of an *Oath* has this Effect among Men, for the sake of that Invocation of God which is therein made use of, whose Wisdom no Man's Cunning can elude, and who suffers not the Man that mocks Him to escape unpunish'd; that not only a *heavier Punishment* is assign'd to him who forswears himself, than to him who barely breaks his Word; but it puts them in mind to avoid all *Deceit* and *Prevarication* in the Matters which it is added to confirm. VII. *Punishment.* L. N. N. l. 4. c. 2. § 12.

NOT yet that *all Oaths* are to be consider'd in their greatest *Latitude*, but that sometimes they must be interpreted in the *narrowest Sense*, if so it be, that the Subject-matter seem to require it: For instance; if the Oath be made to promote some *malicious Design* against another, to execute something *threatned*, and not to perform somewhat *promis'd*. Neither does an Oath exclude *tacit Conditions* and *Limitations*, provided they are such as plainly result from the Nature of the Thing; as suppose, I have sworn to give another whatsoever he shall request, if he ask what it is *wicked* or *absurd* for me to grant, I am not at all obliged. For he who indefinitely promises any Thing to him that desires, before he knows what he is like to ask, presupposes the other will crave nothing but what is *honest*, and morally *possible*, not Things absurd or mischievous to himself or any Body else. VIII. *Strict Interpretation.* L. N. N. l. 4. c. 2. § 14.

IX. *Sense of an Oath.* L. N. N. l. 4. c. 2. § 15.

THIS is also to be noted, that in Oaths *the Sense of all the Words thereof is to be such as he shall acknowledge himself to take them in, who accepts the Oath*, that is, *to whom* the other Party swears. For the Oath is to be look'd upon to be made for *his* sake, and not for the sake of the *Juror*. Whence it is *his* Part to dictate the *Form* of the Oath, and this is to do in Words as *plain* as is possible, so that himself may signify in what *Sense* he conceives them; and the Person swearing, may profess that he well understands his *Meaning*, and then those Words are *distinctly* to be express'd, that so no room may be left for Cavils or Shuffling.

X. *Oaths divided.*

OATHS may most fitly be *distinguish'd* according to the *Use* they are apply'd to in Human Life. * Some are annex'd to *Promises* and *Contracts*, thereby to procure a *strict and religious Observance* of the same; others are apply'd to the *Confirmation* of any Man's *Assertion* concerning a Matter of Fact not altogether evident, and where the Truth cannot by other Means be more conveniently search'd out; such are the Oaths administred to *Witnesses*, and those who are privy to another Man's doings; sometimes also two *Adversaries*, or *Litigants*, may, with the Consent of the Judge, or the Concession of one Party, by taking such or such an Oath put an end to their *Law-Suit*.

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* These are call'd Obligatory or Promissory Oaths, (*Juramenta Promissoria*;) the other Assertory or Affirmative Oaths, (*Assertoria*.)

CHAP. XII.

Duties to be obſerv'd in acquiring Poſſeſſion of Things.

WHEREAS ſuch is the Condition of Man's Body, that it cannot be *ſupported* and *preſerved* from that which would deſtroy its Fabric, without the Aſſiſtance of *Things without* him; and whereas by making Uſe of *other Creatures* his Life may be render'd much more *comfortable* and *eaſie*; we may ſafely gather, that it is the Will of the ſupreme Moderator of the World, that he be allow'd to apply ſuch other Creatures to his Service, and that he may even deſtroy many of them for his Occaſions. * Neither doth this hold, as to *Vegetables* only, which have no Senſe of the Loſs of their Beings; but it reaches even the *innocent Animals*, which though they die with Pain, yet are kill'd and devour'd by Men for their Suſtenance without Sin.

I. *Other Creatures uſeful to Man.*

L. N. N. l. 4. c. 3. § 2.

FARTHER, all theſe *outward Things* are underſtood to have been left in the Beginning by God *indifferent to the claim of all Men*; that is, ſo that none of them were the Property of this Man rather than that. Not but that Men were at liberty to *diſpoſe* Things ſo, as ſhould ſeem requiſite to the Condition of Mankind,

II. *Poſſeſſion introduced.*

* See Grotius de *Jure Belli & Pacis, lib.* 2. *cap.* 2. § 2. *ſeqq.*

and the Conservation of Peace, Tranquillity and good Order in the World. Hence it was, that at first, while the Human Race was but of a small Number, * it was agreed, That *whatever any one did first seize should be his, and not be taken from him by another*; provided however, *that he only possesses himself out of the common Store of what is sufficient for his private Service, but not so as to destroy the whole Fund, and so prevent a Stock for future Uses.* But afterward, when Mankind was multiply'd, and they began to bestow *Culture* and *Labour* upon those Things which afforded them Food and Raiment; for the prevention of Quarrels; and for the sake of good Order, those *Bodies* or *Things* also, which produced such Necessaries, *were divided among particular Men,* and every one had his proper Share assign'd him, with this general Agreement, That *whatsoever in this first Division of Things, was yet left unpossest, should for the future be the Property of the first Occupant.* † And thus, God so willing, with the previous Consent, or at least by a tacit Compact of Man, *Property, or the Right to Things.* was introduced into the World.

L. N. N. l. 4. c. 4. § 5.

* There was no need of any Convention, either exprest or tacit for this purpose. The Right of the first Occupant is necessarily concluded to be conformable to his Intention who bestows any Thing in common to many, provided, that in possessing one's self of that which no one has a particular Right to, we content our selves with a modest Proportion, not engrossing the Whole, but leaving what is sufficient for the Occasions and Use of others See *L. N. N. l.* 4. *c.* 4 § 4.

† See *Grotius de Jure Belli & Pacis, lib.* 2. *cap.* 3. § 1.

Now

III. *Property what.* L. N. N. l. 4. c. 4. § 2.

NOW from *Property* flows a Right, whereby the Substance, as it were, of any Thing so belongs to One, that it cannot after the *same* manner *wholly* belong to Another. From whence it follows, that we may at our own Pleasure dispose of those Things which are our Property, and hinder all other People from the Use of them; unless by Agreement they have procur'd from us some special Right. Although in Communities it does not always happen that Properties are kept so unmix'd and absolute, but are sometimes circumscrib'd and limited by the Municipal Laws thereof, or by Orders and Agreements of Men among themselves. But when any certain Thing belongs jointly to more Persons than one after the same manner, then it is said to be *common* to those several Persons.

IV. *All things not possessed.* L. N. N. l. 4. c. 5. § 2.

BUT as Things did not *all at once* become the Possessions of Men, but successively, and according as the State of Mankind seem'd to require; so it was not necessary neither that *every Thing* in the World should be claim'd by one Man or other, but, the Peace of Mankind being preserv'd, *some Things may, and some Things ought to continue, as at the Beginning, common to all.* For there are Things which are, indeed, very advantagious to Man, but then since they are *inexhaustible*, so that every Man may have the Benefit of 'em, and yet no single Person can have the less Use of them, it would be foolish, and to no purpose, for any one to enclose or lay claim to 'em. Such are the Light of the Sun, the Air, the running Water, and the like: Among which also may be accounted the vast Ocean flowing between

great

great Continents, for so much of it as is very far distant from the Shore. Because 'tis not only more than sufficient for the promiscuous Use of all Men, but 'tis morally impossible for any single Nation to guard it. * For where a Thing is of that Nature, that other Men cannot by any Means be hinder'd from the Use of it, it is not only in vain to divide or lay claim to it, but it is apt to give Occasion for insignificant Quarrels.

V. *Property twofold.* L. N. N. l. 4. c. 6. THE Methods of acquiring Property are either *Original* or *Derivative*: The *Original Ways* of obtaining Property, are those by which the Property of Things was first introduced: The *Derivative Ways* are those, by which a Property already settled passeth from one Man to another. Again, the *Original Way* of acquiring Property is twofold; either, first, *simple and absolute*; as when we obtain *Dominion* and *Property* over the Body or Substance of the Thing: Or, secondly, *primitive and respective*; as when we add to a Thing already our own some farther Improvement and Increase.

VI. *Premier Seisin.* AFTER it had been covenanted among Mankind that Things should be *appropriated* to this or that Man, it was also agreed, That what Things soever had *not fallen* within that *first Division*, should thereafter become the Property of the *first Occupant*, that is, of him, † who before any other, should actually seize it

* See *Grotius de Jure Belli & Pacis, l.* 2. *c.* 2. § 3.

† That whereon the first Occupant properly grounds his Right is, his giving open Notice, before any other, of his Design and Intention to preserve to his own Use this or

it with a Design of possessing the same. So that even at this time the Original Method of acquiring Property in many Things is only *Premier Seisin*, or the first Occupancy. After this manner Titles are made to desolate Regions, which no Man ever claim'd, which become his who *first enters* upon 'em with an Intention of making them his own, provided he cultivate them and assign *Limits* how far he propounds to occupy. But when any Number of Men *jointly* possess themselves of any Tract of Land, 'tis customary to assign to each Member of the Company a *Share*, and to account what is left undivided to belong to the Society in *common*. * By this *first* Occupancy also are gain'd all the wild Beasts, Birds, and Fishes living in the Sea, Rivers, or Lakes thereunto appertaining; as well as what by the Sea shall be thrown upon the Shore; except *particular Laws* inhibit the promiscuous Seizure of the same, or assign them to some certain Claimant. These, if we would make our own, we must actually *seize* 'em, and take 'em into our *Possession*. By this Occupancy also we may rightfully acquire Possession of Things whereof the

L. N. N. l. 4. c. 6. § 3, 4.

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or that Thing, which he has made himself the first Possessor of. If therefore he has given any such fair and significant Notice of such his Intention, or if any others, who might with him have a common Right to the Thing, shall freely and significantly set forth their Intention to depart from their Share, or Part of the Thing in favour of this Claimant: He then comes to have the Original Property in the Thing, even before he may have taken actual Possession of it. See *L. N. N. l.* 4. *c.* 6.

* See *Grotius de Jure Bell.* &c. *L.* II. *c.* 8. § 2. *seqq.*

Property

Property which any other Perſon could have is *extinct*. As for inſtance, in Things which are caſt away with Intention of the Owner not to have 'em any more, or in Things which at firſt we loſt unwillingly, but in Time relinquiſh'd and forewent. * To which may be added what the Lawyers call *Treaſure trove*, or Money found, the Owner whereof is not known, which goes to the Finder, except by the ſpecial Laws of a Country it be otherwiſe provided.

VII. *Acceſſional Improvements.* L. N. N. l. 4. c. 7.

MOREOVER, there are many Things capable of being poſſeſs'd which continue not always in the ſame State, but ſoon after ſeveral manners *increaſe* of themſelves or inlarge their Subſtance; to others ſome *external Additions* are made; many bring forth *Fruit*, and not a few by Man's Labour and Workmanſhip admit of *Improvement*. All theſe are compriſed under the Head of *Acceſſional* Advantages, and may be divided into two Sorts; for *ſome* without the Help of a Man accrue from *Nature* alone; while *others* either wholly or in part are to be attributed to *Human Induſtry*. † Concerning both which this is to be the Rule, To him who is the Owner of the *Thing*, to the ſame belong the *Improvements* and *Acceſſional* Advantages; and he who has form'd any Matter of his own into ſuch or ſuch a *Faſhion*, is Owner of that *Form* or *Faſhion*.

VIII. *Services.*

BUT Caſes often happen, where, either by Contract, or ſome different Way, another Man

* See *Grotius de Jure Belli & Pacis*, *Lib.* 2. *c.* 8. § 2. *ſeq.*
† See *Grotius de Jure Belli & Pacis*, *Lib.* 2, *cap.* 8

may

may get a Right to receive a certain *Profit* out of Things that are *ours*, or to prohibit us the Using even of what is *our own* to *every* Purpose. These Rights are wont to be call'd *Services*, and they are of two Sorts, either *Personal*, where the Advantage from what belongs to another Man comes to the Person *immediately*; or *Real*, where such Benefit is receiv'd from that which is another's by the Means or *Mediation* of that which is ours; among which are accounted the Right of receiving Profits, of making use of what is another's, of living in such a Place, of commanding the Work of Servants. The *Real Services* are again subdivided into such as regard the *City* or the *Country*; the first Sort are the supporting my Neighbour's House or Wall which cannot but bear upon mine, affording the Benefits of Lights, not stopping them up, allowing Prospects, carrying off the Rain-Water, and the like: The *latter* are Liberty of Passage for Men or Cattle, Leave to derive or draw Water, or to water Cattle, or to graze 'em for a time, *&c.* All which Services have been introduced for the Preservation of good *Neighbourhood*.

L. N. N. l. 4. c. 8.

IX. *Derivative Property.* L. N. N. l. 4. c. 9.

AMONG the *derivative* Methods of acquiring Property, some are when by the Disposal of the Law Things are devolv'd from one upon another; others are when Possession is transferr'd by the *former Owner*; and this sometimes affecting the same in *whole*, and sometimes in *part*.

X. *Inheritance to those who die intestate.*

THE * Whole of an Estate by the Death of the former Owner generally passes by *Succession* to

* See *Grotius de Jure Belli, &c. l.* 2. *c.* 7. § 3. *seqq.*

L. N. N. l. 4. c. 11. to the *next Heir* of the Inteſtate. For it being repugnant to the common Inclinations of Men, and altogether diſſerviceable to the Peace of Mankind, that ſuch Poſſeſſions ſhould be accounted as *foregone* and *relinquiſh'd*, and as left to be a Prey to any who ſhall ſeize 'em, which ſuch Owner had, while he liv'd, taken ſo much Care and Pains to get: Hence, by the Dictates of *Reaſon* it has obtain'd among all civiliz'd Nations, that if any Man dies, not having *diſpos'd* of what he had, the ſame ſhall *devolve* to thoſe, whom, according to the *general Inclination* of Mankind, he muſt be thought to have holden moſt dear to him. And theſe, regularly conſider'd, are thoſe who *deſcend* from us, as our *Children*, &c. after them thoſe who are of the ſame *Conſanguinity*, according as they are nearly ally'd. And tho' there may be many, who either for having receiv'd *Benefits*, or from ſome *particular Affection*, have a greater Reſpect for Perſons not at all by *Blood* related to them, than for the neareſt *Kin*; yet for Peace ſake it is neceſſary, without taking Notice of the peculiar Caſe of ſome Few, rather to follow the *univerſal Propenſity* of Man, and to obſerve that *Method* of Succeſſion which is moſt plain, and leaſt obnoxious to *Controverſies*; which would be very apt to ariſe, if the *Benefactors* and *Friends* of the deceaſed might be admitted to conteſt Succeſſion with the next of *Kin*. So that if a Man has a mind to prefer thoſe to whom he ſtands obliged by Kindneſſes, or ſuch as he has on any other account a Love for, he is to make ſuch Diſpoſals openly and expreſly.

WHENCE

WHENCE it follows, that the next *Heirs* to any Man are his *Children*, which are given by Nature to Parents to be carefully bred and educated, and for whom every Parent is suppoſed to wiſh a moſt plentiful Proviſion, and to deſign to leave whatſoever he ſhall die poſſeſs'd of. But by *Children* are *chiefly* underſtood ſuch as are born in lawful Matrimony: For to theſe much Favour is due from *Reaſon* itſelf, from the *Honour* and *Decency* of the married Life, and from the *Laws* of all civiliz'd Countries, above the *Illegitimate*. All which Conſiderations obtain yet with theſe Exceptions, to wit, unleſs the Father has ſufficient Reaſon not to *acknowledge* ſuch a one for his Son, or *diſinherits* him for ſome heinous Wickedneſs. In the ſame Caſe with *Children* are alſo to be conſider'd Progeny of *lower Degrees*, as Grand-children, whom the Grand-father is bound to bring up, and who have Right to ſhare his Inheritance together with the Uncles on both ſides; and this, becauſe there can be no Reaſon, that the Miſery of loſing their deceaſed Parent ſhould be aggravated by being excluded from their Proportion, of Inheritance in the Eſtate of their Grand-father. Upon failure of *Heirs deſcendant*, 'tis reaſonable the Goods of Children revolve to their *Parents*; and that to thoſe who are Fatherleſs, Motherleſs, and Childleſs their *Brethren* ſhould ſucceed; and upon Default of theſe, the *next of Kin* to the deceas'd ought to inherit. Tho' in order to prevent Contentions, to which on this ſcore great Occaſions are frequently given, and that this Matter may be ſettled for the publick Good, in moſt Communities the *Order of Succeſſion*

XI. *Children Heirs.* l. 4. c. 11. § 3.

cession is found to be accurately stated; and such Directions of the Government it is most safe for every private Man to follow in this case, unless very weighty Causes force him to the contrary.

XII. *Of Prescription.* L. N. N. l. 4. c. 12. ANOTHER *derivative* Method of acquiring Property justifiable by Law, was by the * *Romans* call'd *Usucaptio*, by the Modern's *Prescription*; by which he who by honest Means and a just Title hath gotten Possession of what was really another's, and hath also held it for a considerable time, without being disturb'd or oppos'd, obtains the full Property of the Thing thus possess'd, so as to extinguish all the *Right* and *legal Claim* of the former Owner.

THE Reasons on which this *Right of Prescription* is grounded, are, First, The former Proprietor having for so long time neglected claiming what was his, is judged voluntarily to have relinquish'd all Right and Title to it; it being reasonable to believe, that in a sufficient Space of time he could not want Opportunities, had he had Inclinations to put in his Claim. Secondly, The Preservation of the Peace of Society demands, that he who by *honest* Methods comes to the *Possession* of what he has, should not be perpetually liable to have taken from him, what became his Purchase by a *fair and honest Title*, especially it being much more grievous to the *present Possessor* to be turn'd out of a Possession honestly acquir'd, than to the *former Owner* not to be put into Possession of what he had long since lost the *Hopes* and *Ex-*

* See the whole 4th Chap. of the 2d Book of *Grotius de Jure Belli, &c.*

pectations

pectations of. The Rules of *Natural Equity* are sufficient to determine what time shall suffice to create *Prescription* in particular Cases: However, it is much better, for the Prevention of *Strife* and *Controversies*, that certain limited times, according to Reason and Convenience, should be stated and mark'd out by all Communities, whereby it may be determined what shall make a good *Prescription.*

XIII. *Last Will.* L. N. N. l. 4. c. 10.

THE Whole also of an Estate may, by an Act of the former Proprietor, upon his Death be pass'd away by his * *Last Will* and *Testament*; for this has been allow'd by most Nations, that for some kind of Ease to our Thoughts of Mortality, a Man yet alive may, if Death happen, transfer what he has of outward Goods to some Person that he loves best. Now whereas in the most ancient Times it seems to have been customary, that the dying Man upon the Approach of his End *openly declar'd* his Heirs, and with his own Hands *deliver'd* such or such Portions into the Hands of them who were to receive; yet afterwards, for good Reasons, another manner of *Bequeathing* was approved by many People; to wit, that a Man may at any time, when himself thinks good, make his own Will, and either declare it *openly*, or keep it *close* in Writing; which Will also he may at his Pleasure *alter*, and of which the Heirs he has named or written down cannot make any Use till the Testator be *dead.* Not but that such *Last Wills*, of how much Authority soever they are among Men, yet are to be order'd with Consideration

* See *Grotius de Jure Bell., &c. lib.* 2. *cap.* 6. § 14.

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of the Party's *various Relations* to Men, and of the Good of the *Community*; the Neglect whereof has given Occasion for the *Laws* oftentimes to provide and give Rules for making them; from which prescribed *Directions*, if any Man depart, he has no Reason to *complain*, that Regard was not had to his *Last Will*.

XIV. *Gift.* WHILE Men are yet living, Things are transferr'd by the Act of the first Proprietor, either *Gratis* or *Freely*; or else by the Mediation of some *Contract*. The former Way of Transferring is call'd *Gift*: And of the latter, which is *Contracting*, we shall speak hereafter.

XV. *Forcible Possession.* SOMETIMES also Things change their Owner without the Consent, and even *against the Will* of the same Owner; and this is mostly in Communities, by way of *Fine*, when sometimes *all* the Estate of a Convict, sometimes such a *Portion* only shall be forfeited, and the same shall be given either to a private Person who has suffer'd Wrong, or applied to the Uses of the Publick. So in *War* Goods are *forcibly* taken from the Possessor, who parts with them very *unwillingly*, by an Enemy who is too strong for him, and become the true *Property* of the Seizer; not but that the first Owner has still a Right with a greater Force, whenever he can, to recover them, so long as till by subsequent Treaties of Peace he does in effect renounce his Pretences thereto.

L. N. N. l. 4. c. 6. § 14. l. 2. c. 16. § 13.

CHAP.

CHAP. XIII.

The Duties which naturally result from Man's Property in Things.

PROPERTY in Things being establish'd among Men, these Duties naturally arise. * EVERY *Man is obliged to suffer another, who is not a declared Enemy, quietly to enjoy whatsoever Things are his; and neither by Fraud or Violence to spoil, imbezzel, or convert them to his own Use.* Whence it appears, That Theft, Rapine, removing of Boundaries, and the like Crimes, which tend to the Invading and Incroaching upon other Mens Properties, are forbidden.

I. *We must conscienciously abstain from invading our Neighbours Property.* L. N. N. l. 4. c. 13.

WHEN *any Thing, that belongs to another, falls into our Hands, although it be fairly on our Part, that is, without Trick or Fraud of ours; yet if it belongs to another Person, and we have Possession of it, we are obliged to take care, as far as in us lies, to return it to its right Owner.* By this is not to be understood, That when we have procur'd any Thing to ourselves by fair and honest Means, and enjoy it by a rightful Title, we are to make groundless Doubts and Scruples about the Validity of our Right, and make Proclamation, as it were, That we are in Possession of such a Thing; that, if possibly it should belong to another Person, the Proprie-

II. *Restitution to be made if we possess what belongs to another.* L. N. N. l. 4. c. 13. § 2.

* See Grotius de Jure Belli & Pacis, Book II. Ch. 10.

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tor might come and demand it. It is enough that, if we come to the Knowledge that what we possess is another Person's, we then give notice to the Proprietor, that it is in our Possession, and that we are ready to deliver it up to the right Owner. And in this Case, we are not bound to restore it, unless we are repay'd the necessary Charges we have been at in procuring, or preserving it; which we may justly demand to be reimbursed, or stop the Thing 'till Satisfaction be made. And the Duty of *Restitution* of which we are speaking, is so indispensably necessary, that it sets aside all private Ingagements or Contracts to the contrary, and takes away all Right that may seem to arise from any such private Obligations: As for Instance, Should a *Thief* trust and deposite with me, upon my Promise of Redelivery, somewhat that he has stollen, I being altogether ignorant of the Matter; if after this, the *Right Owner* appears, the same is to be restor'd to *him*, and not to the *Thief*.

III. *Restitution Part consum'd.* L. N. N l. 4. c. 13. § 6.

BUT *if any Thing belonging to another, which yet we came by fairly and honestly, be wasted and consum'd, 'tis our Duty to restore only so much to the Owner as we have made Profit or Advantage to our selves from it.* All that lies upon us to do herein, being to refund so much as we have gain'd thereby, that so we may not be the richer by another Man's undeserved Loss.

IV. *Conclusions. First.* L. N. N. l. 4. c. 13. § 7.

FROM these Premisses, we may deduce the following Conclusions: 1. *A Presumptive Owner*, (or one who without any Covin on his Part, becomes the Possessor of what belongs to another Man) *is not obliged to make any Restitution, if the Thing perishes*; because neither the Thing it self

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is in his Power, neither has he receiv'd any Gain or Advantage thereby.

2. Such a Presumptive Owner is obliged *to make Restitution, not only of the Thing it self, but also of the Fruits and Profits, which are in being at the Time.* For to whomsoever the *Thing* really belongs, to the same likewise the *Profits* and *Advantages* thence arising do accrew. Nevertheless, it is lawful for the Possessor to deduct what Charges he has been at upon the Thing, or upon its Culture and Improvement, by means whereof it has produced those Fruits and Profits. V. *Second.* L. N. N. l. 4. c. 13. § 8.

3. A Presumptive Owner is obliged *to make Restitution of the Thing, and of the Fruits and Profits of it that are consumed, if otherwise he would have consum'd as much of his own, and can recover the Value thereof from him of whom he received Possession.* For otherwise he would inrich himself, whilst by spending what belongs to another, he spares his own. VI. *Third.* L. N. N. l. 4 c. 13. § 9.

4. A Presumptive Owner is not oblig'd *to make good the Fruits and Profits which he might have made of the Thing in his Possession, but neglected so to do:* Because he has not the Thing it self, nor any Thing in Lieu thereof, and he must be consider'd, to have done by it, as he would have done by that which was *truly* his own. VII. *Fourth.* L. N. N. l. 4. c 13. § 10.

5. If a Presumptive Owner *makes a Present or Donation of any Thing belonging to another, which was given to himself, he is not bound to restore it;* unless he had been *obliged* in Duty to have given the like Value. For in such a Case, he would be a Gainer, by saving what he must have given of his own. VIII. *Fifth.* L. N. N. l. 4. c. 13. § 11.

IX. *Sixth.* L. N. N. l. 4. c. 13. § 12.

6. If a Presumptive Owner *makes over what he hath purchased of another Man, upon a valuable Consideration, he is not bound to make Restitution*; unless so far as he has made any Advantage by it.

X. *Seventh.* L. N. N. l. 4. c. 13. § 13.

7. A Presumptive Owner is obliged *to restore that which belongs to another, tho' he bought it upon a valuable Consideration*; nor can he demand of the *true Owner* the Price he paid for it, but only of him from whom he had it; unless so far as the Charges which the Owner must necessarily have been at, in regaining the Possession of his Right; or that otherwise he did freely promise some Reward for the Recovery.

XI. *Things found.* L. N. N. l. 4. c. 13. § 15.

Whosoever happens to *find* any Thing belonging to another, which, 'tis probable, the right Owner lost against his Will, he cannot take it up with an Intention to detain it from him when he requires it. But if the Owner appear not, he may fairly keep it himself.

Chap.

CHAP. XIV.

Of the Price and Value of Things.

AFTER *Property* was introduced into the World, all Things not being of the same *Nature*, nor affording the same *Help* to Human Necessities; and every Man not being sufficiently provided with such Things as were necessary for his Use and Service, it was early brought into Practice among Men to make *mutual Exchanges* of one Thing for another. But because it very often happened, that Things of a *different Nature* and *Use* were to be transferred; lest either Party should be a Loser by such *Exchanging*, it was necessary, by a common Agreement or Consent among themselves, to assign to Things a certain *Quantity* or *Standard*, by which those *Things* might be compar'd and reduced to a Balance between each other. The same also obtained as to *Actions*, which it was not thought good should be done *gratis* by one Man for another. And this *Quantity* or *Standard* is that which we call *Price* or *Value*.

I. *Price.* L. N. N. l. 5. c. 1. § 1.

THIS *Price* is divided into *Common* and *Eminent*; The *First* is in *Things* or *Actions* which come within the compass of *ordinary Commerce*, according as they afford either Usefulness or Delight to Mankind. But the other is in *Money*, as it virtually contains the Value of all Things and Works, and is understood to give them their common Estimate.

II. *Price twofold.* L. N. N. l. 5. c. 1. § 2.

III. *Common Value.* L. N. N. l. 5. c. 1. § 4.

THE natural Ground of the *Common Value*, * is that † *Fitness* which any Thing or Action has for supplying, either mediately or immediately, the *Necessities* of Human Life, and rendring the same more *easie* or more *comfortable.* Hence it is we call those Things which are not of any *Use* to us, *Things of no Value.* There are nevertheless some *Things most useful* to Human Life, which are not understood to fall under any *determinate Price* or *Value*; either because they are or ought to be exempted from Dominion and Property, or because they are not capable of being exchanged, and therefore cannot be traded for; or else, because in Commerce they are not otherwise regarded than as Appendages to be supposed of course to belong to another Thing. Besides also, when the Law of God or Man places some Actions above the Reach of Commerce, or forbids that they should be done for a Reward, it is to be understood that the same Laws have set them without the Bounds of Price or Valuation. Thus the Upper Regions of the *Air*, the *Sky*, and the *Heavenly Bodies*, and e-

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* See *Grotius de Jure Belli & Pacis*, l 2. c. 12. § 14.

† Our Author here gives an imperfect Account of the proper and intrinsick Value of Things. For Things capable of Valuation or Price, ought not only to be of some Use and Service to human Life, if not really, yet at least in the Opinion and Fancy of those who desire them; but also they ought to be of such a Nature, as not to be sufficient for the Occasions and Demands of every one. The more any Thing is useful or scarce, in this Sense, the greater is its intrinsick Price or Value. Nothing can be more useful to human Life than Water, yet it never bears any Price or Value, unless in such Places, or under such Circumstances, as make it not sufficient for every one's Use, or difficult to be come at.

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ven the vast *Ocean* are exempt from Human Property, so that no Rate or Value can be put upon them. So there is no Rate or Price to be set upon a *Freeman*, because Freemen come not within the Compass of Commerce. Thus the Lying open to the Sun, a clear and wholesome Air, a pleasant Prospect to the Eye, the Winds, Shades, and the like, consider'd separately in themselves, bear no Price, because they cannot be enjoy'd and purchas'd separately from the Lands they belong to; but yet of what Moment they are in raising the Value of Lands and Tenements to be purchas'd, no Man is ignorant. So likewise 'tis unlawful to set any Rate or Price on *Sacred Actions*, to which any moral Effect is assign'd by *Divine Institution*; which Crime is call'd *Simony*. And it is great Wickedness in a *Judge* to expose *Justice* to Sale.

IV. *Inhansing or Debasing a Price.* L. N. N. l. 5. c. 1. § 6.

Now there are various Reasons, why the Price of one and the same Thing should be *increas'd* or *diminish'd*, and why one Thing should be preferr'd before another, though it may seem to be of *equal* or *greater Use* to Human Life. For here the *Necessity* of the Thing, or its extraordinary *Usefulness*, is not always regarded; but, on the contrary, we see those Things are of the least Account or Value, without which Human Life is least able to subsist; and therefore, not without the singular Providence of Almighty God, *Nature* has been very *bountiful* in providing *plentiful* Store of those Things. But the *Rarity* or *Scarceness* of Things conduces chiefly to the inhansing their Value; which is the more look'd upon, when they are brought from remote Countries. And hence the wanton Luxury of Mankind has set *extravagant Rates* upon

upon many Things which Human Life might very well be without; for Instance, upon *Pearls* and *Jewels*. But the Prices of Things, which are of *daily Use*, are then chiefly rais'd when the *Scarcity* is join'd with the *Necessity* or *Want* of them. The Prices of *Artificial Things*, besides their *Scarceness*, are for the most Part inhans'd by the ingenious *Contrivance* and Curiosity of *Art*, that is seen in them, and sometimes by the Fame and Renown of the Artificer, the Difficulty of the Work, the Want of Artists in that Way, and the like. The Prices of *Works* and *Actions* are rais'd by their Difficulty, Neatness, Usefulness, Necessity, by the Scarcity, Dignity, and Ingenuity of the *Authors* of them; and lastly, by the Esteem and Reputation which that Art has gotten in the World. The *Contrary* to these are wont to *diminish* the Price of Things. Sometimes again, there may be some certain Thing, which is not *generally* much esteem'd, but only by some *particular Persons*, out of a peculiar Inclination; for Example, because he, from whom we had it, is mightily *belov'd* by us, and that it was given as a *Token* of his particular Affection to us; or because we have been *accustom'd* thereto, or because it is a *Remembrancer* of some remarkable Accident, or because by the Help thereof, we have escap'd any extraordinary *Danger*, or because the Thing was made by *Our selves*. And this is called *The Estimate of singular Affection.*

V. *Particular Prices Legal.* L. N. N. l. 5. c. 1. § 8.

BUT there are other Circumstances likewise to be consider'd in *stating* the Rates and Prices of *particular Things*. And among those indeed, who live in a Natural Independance on any other, the Prices of particular Things are determin'd no otherwise

otherwiſe, than by the *Will* of the *Perſons contracting*; ſince they are intirely at their own Liberty to make over or to purchaſe what they pleaſe, nor can they be controlled in their Dealings by any ſuperior Authority. But in States and Governments the *Prices of Things* are determin'd two ſeveral Ways: The *Firſt* is by an *Order* from the *Magiſtrate*, or ſome *particular Law*; the *Second* is by the common *Eſtimate* and *Judgment* of Men, or according as the *Market* goes, together with the *Conſent* and *Agreement* of thoſe who contract among themſelves. The former of theſe by ſome is call'd the *Legal*, the other the *Vulgar Price*. Where the *Legal Rate* is fix'd for the ſake of the *Buyers*, as it is for the moſt part, there it is not lawful for the *Sellers* to exact *more*; though they are not forbidden, if they will, to take *leſs*. So where the Rate of any *Labour* or *Work* is tax'd by the Publick Magiſtrate for the ſake of thoſe who have Occaſion to hire, it is not lawful for the Workman to demand *more*, though he be not prohibited to take *leſs*.

VI. *Vulgar Price.* L. N. N. l. 5. c. 1. § 9.

BUT the *Vulgar* Price, which is not fix'd by the Laws, admits of a certain *Latitude*, within the Compaſs whereof more or leſs may be, and often is, either taken or given, according to the *Agreement* of the Perſons *dealing*; which yet for the moſt part, goes according to the Cuſtom of the *Market*. Where commonly there is Regard had to the Trouble and Charges which the Tradeſmen generally are at, in the bringing home and managing their Commodities, and alſo after what manner they are bought or ſold, whether by Wholeſale or Retail. Sometimes alſo on a ſudden the Common Price

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is alter'd by reason of the *Plenty* or *Scarcity* of *Buyers*, *Money*, or the *Commodity*. For the *Scarcity* of Buyers and of Money, (which on any particular Account may happen) and the Plenty of the Commodity, may be a Means of *diminishing* the Price thereof. On the other hand, the Plenty of Buyers and of Money, and the Scarcity of the Commodity, *inhanses* the same. Thus as the Value of a Commodity is lessen'd, if it *wants* a Buyer, so the Price is augmented when the Possessor is solicited to sell what otherwise he would not have parted with. Lastly, it is likewise to be regarded, whether the Person offers *ready Money*, or desires *Time* for Payment; for Allowance of *Time* is Part of the *Price*.

VII. *Price eminent.* L. N. N. l. 5. c. 1. § 12.

But after Mankind degenerated from their primitive Simplicity, and introduced into the World several kinds of Gaining, it was easily discern'd, that that *Common* and *Vulgar* Price was not sufficient for the dispatching the Business of Men, and for the carrying on of Commerce, which then daily increas'd. For at first all Kind of Trading consisted only in *Exchanging* and *Bartering*, and the Labours of others could no otherwise be valued than by Work for Work, or some Thing given in Hand for Recompence. But after Men began to desire so many several Things for *Convenience* or *Pleasure*, it was not easie for every one to become Master of That which another would be willing to take in Exchange, or which might be of equal Value to the Things he wanted from him. And in civiliz'd States or Societies, where the Inhabitants are distinguish'd into *several Stations*, there is an absolute

lute Necessity there should be different Degrees and Sorts of Men, which, if that simple and plain Way of *bartering* of *Things* and *Works* had been still in Use, could not, or at least, not without great Difficulty, support themselves. Hence most Nations, which were pleased with a more sumptuous Way of Living, thought fit, by Publick Consent, to set an *Eminent Price* or *Value* upon some Certain Thing, whereby the *Common* and *Vulgar* Prices of other Things should be measured, and wherein the same should be virtually contain'd. So that by Means of this *Thing*, any one may purchase to himself whatsoever is to be sold, and easily manage and carry on any Kind of Traffick and Bargain.

VIII. *Gold, Silver, &c.* L. N. N. l. 5. c. 1. § 13.

For this purpose, most Nations chose to make use of the nobler Kind of *Metals*, and such as were not very Common; because these being of a very compacted Substance, they cannot easily be *worn out*, and admit of being *divided* into many minute Parts; nor are they less proper to be *kept* and *handled*; and for the *Rarity* of 'em are equivalent to many other Things. Altho' sometimes for Necessity, and by some Nations for Want of *Metals*, other *Things* have been made Use of instead of *Money*.

IX. *Coin.* L. N. N. l. 5. c. 1. § 14.

Moreover, in Communities, it is only in the Power of the Chief Magistrates to assign the *Value* of *Money*; and thence *Publicks Stamps* are wont to be put upon them. Nevertheless, in the assigning thereof, respect is to be had to the Common Estimate of the *Neighbouring Nations*, or of those with whom we have any *Traffick* or *Commerce*. For other-

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wise, if the State should set *too high a Value* on their Money, or if they should not give it a *just* and *true Allay*, all Commerce with Foreign Nations, which could not be carried on by *Exchange* or *Barter* alone, would be at a Stand. And for this very Reason, the Value of Money is not rashly to be *alter'd*, unless a very great Necessity of State require it. Tho' as Gold and Silver grow more plentiful, the *Value* of *Money*, in Comparison to the Price of Land, and Things thereon depending, is wont, as it were insensibly and of its self, to grow lower.

CHAP. XV.

Of those Contracts in which the Value of Things is pre-supposed; and of the Duties thence arising.

I. *Pacts and Contracts.* L. N. N. l. 5. c. 2. § 1.

A *PACT* or *Agreement* in general, is the Consent and Concurrence of Two or more in the same *Resolution*. But because oftentimes simple *Agreements* are contra-distinguish'd to *Contracts*, the Difference seems chiefly to consist herein, That by *Contracts* are understood such Bargains as are made concerning *Things* and *Actions*, which come within the compass of *Commerce*, and therefore suppose a *Property* and *Price* of Things. But such Covenants as are concluded upon, about other Matters, are called by the common Term of *Pacts* or *Agreements*.

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* Although even to some of these is promiscuously given the Name of *Pacts* and *Contracts*.

CONTRACTS may be divided into *Gratuitous* and *Chargeable*. The former Sort affords *gratis* some Advantage to one of the Parties contracting: the latter subjects each of the Parties contracting to some Charge, or lays upon them some Condition or Obligation equally burdensome to them both; in which Case, nothing is done or delivered by either Party, but with a Prospect of receiving an Equivalent. II. *General Division of Contracts.* L. N. N. l. 5. c. 2. § 8.

OF *Gratuitous* Contracts, there are three Sorts; a *Commission*, a *Loan*, and a *Charge*. III. L. N. N. l. 5. c. 4. §. 1.

A *Commission* is, *When any one takes upon himself* gratis, *and in mere good Will, to transact the Business of his Friend, who requests this Trouble of him on the Account of Friendship only.* And this may be done two Ways; first, When the Method of transacting the Business is *prescribed* to the Person who is so kind as to undertake it; and, secondly, When it is wholly left to his *Judgment* and *Discretion*.

BUT as no one would commit the Management of his Affairs to any one but a Friend, and one of whose Honesty and Integrity he has a good Opinion; so he who undertakes this Trust, ought to be careful not to abuse this Confidence reposed in him; but to execute it with the greatest Care, and with the utmost Fidelity. But then, on the other hand, he who has given him this Commission, ought to prevent its being any Loss to him that executes it, by repaying him any Expences he is at in the Execution

* *Grotius de Jure Belli & Pacis, lib. 2. cap.* 12.

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of it, and likewise by satisfying him for any Loss he may suffer in his own Affairs, while he spends his Pains and Time thus in Friendship to him.

IV. *Of Loans.* L. N. N. l. 5. c. 4. § 6. WHEN *we give to another the free Use of what is ours, without any Consideration for the Use of it,* this is called a *Loan*; and the Rules to be observed in this Case, are:

1. WE must take all possible Care most diligently to look after and preserve intirely the Thing lent us.

2. WE must put it to no other Uses, nor detain it any longer Time, than the Proprietor is willing.

3. WE must restore it to the Owner intire, and in the same Condition we received it; or at least with no other Detriment than what it must of Necessity receive by the common and ordinary Use of it.

4. IF after a Thing is lent us for a certain Time, something, not foreseen at the Time it was lent, should fall out, so that the Proprietor wants it before the Time he had lent it us for, we are to restore it without Delay, as soon as ever it is required of us.

5. IF the Thing lent us, comes to any Damage, or is destroyed by any unforeseen and unavoidable Accident, and not by any Fault of ours, we are not obliged to make it good, if it be reasonable to think, it would have been in the same manner damaged or destroyed, had it been in the Proprietor's Custody, as it was in ours. But if it lay in our Power to have prevented such Damage or Loss, then we ought to make Restitution to the Proprietor to the full Value,

Value, * since it is very unreasonable in us to make any one lose what is his, only for being so kind to us, as for our sakes, to deprive himself of the Use of it.

HE that lends any Thing to another, lies under no other Obligation to the Person he lends it to, but this only ; If the Borrower has been at any necessary Charge, more than what the ordinary Use of the Thing requires, in preserving it, then this extraordinary Expence ought to be made good to him by the Proprietor.

V. *Deposit or Trust.* L. N. N. l. 5. c. 4. § 7.

THE Third and Last Sort of gratuitous Contracts, is a *Charge*, *Trust*, or *Deposit*: Which is, *When we commit any Thing of our own, or which we have any manner of Title to, or Interest in, to the Trust and Care of another Person, to keep the same* Gratis : And what the Person's Duty is, to whom the Deposit is made, will easily be understood.

1. THE Thing thus trusted in his Hands, must be carefully looked after, nor must any Use be made of it, without the Knowledge and Consent of the Proprietor, if it can in any ways receive Damage by such using it ; as also if it be any Profit or Benefit to the Proprietor to have it kept concealed from any one's Sight: And if the Person intrusted shall take the Liberty of using it, he ought to make good any Damage or Disadvantage that shall accrue from the Use of it to the Owner. Likewise, it is not just to

* There is, in Cases of this Nature, always a tacit Agreement, by Virtue of which, he that borrows any Thing, ingages to restore the Thing lent, either in Kind, or to make Amends by something of equal Value. *See L. N. N. l. 5. c. 4. § 6.*

untye, unseal, or otherwise open any Thing we are intrusted withal, that is sealed or ty'd up, or to take it out of any Box, Chest, or other Thing in which the Owner had inclosed and secured it, when he put it into our Hands.

2. We ought immediately to restore any Thing deposited with us, as soon as ever the Proprietor claims it; at least, unless the Re-delivery of it, at such Time it is so claimed, should be a real Prejudice to the Claimant, or to some other Person. But to deny that we have it, when the Owner comes to reclaim what he trusted us with, is a most infamous Piece of Wickedness, and even more base than Theft it self: And it is yet a more detestable Crime, to withold or disown a *miserable Deposit*; that is, what is put into our Hands in the Time of any Misfortune, during the Danger of Fire, or in the Midst of Tumults and Confusions, or the like Calamities.

He who makes the Deposit on his Part, ought to re-imburse, to the Person with whom it is made, all the Charges that he has necessarily laid out upon the Thing deposited, while it continued in his Hands.

VI. *Equality in all chargeable Contracts.* L. N. N. l. 5. c. 3. § 1.

In all *Contracts that are purely chargeable,* and have nothing gainful in them, where the Law or the Market hath fix'd the Prices of Things, a *just Equality* is to be observed, that is, one Party ought to receive as much Benefit as the other; and if it happens, that one receives less than the other, he has a Right to demand the Rest, which if denyed him by the other Party, he is at Liberty to set aside the Contract.

Now to find out and adjust this *Equality,* it is necessary that the Parties contracting be each of them

them alike thoroughly acquainted with the Commodity about which they are treating, and with the ſeveral Qualities of it; and therefore whoſoever is going, by way of Contract, to make over the Property of a Thing to another, is indiſpenſably obliged to expoſe not only the good Qualities of it, but alſo, to the beſt of his Knowledge, the Faults and Defects of it; ſince otherwiſe no juſt Price or real Value of the Thing can be aſſign'd. But this is not to be extended to minute and circumſtantial Matters, which affect not the Subſtance of the Thing; nor need the Faults already known to the Buyer, be mention'd to him; for if, knowing the Faults, he purchaſes the Thing, ſuch Defects do not annull the Contract, which ſhall ſtand good, and the Buyer muſt be contented with the Inconvenience he has conſented hereby to bring on himſelf.

VII. *If an Inequality is diſcover'd after the Bargain is made, it muſt be redreſs'd.* L. N. N. l. 5. c. 3. § 9.

THE Equality we have been mentioning, is ſo abſolutely neceſſary in all *chargeable Contracts*, that although in making ſuch a Contract, all the Faults of the Thing contracted for, have been fairly expos'd, and nothing demanded more than was really believed to be the juſt Value of the Thing; yet if afterwards there appears to have been an Inequality, without any Fault of the Contractors, (as ſuppoſe ſome Defect or Blemiſh lay undiſcover'd, or there was ſome Miſtake in the Price) it ought to be corrected, and he that has too much, muſt make Amends to the Sufferer. In *notorious Abuſes* of this Kind, the Laws of every Country have made Proviſion for Reparation; but in leſſer Breaches of this Duty, they are ſilent, for the avoiding a Multitude of unneceſſary Suits, ſuppoſing herein, that every

Body will take Care, in his own Concerns, not to be impos'd upon.

VIII. *Bartering.* L. N. N. l. 5. c. 5. § 1. Now among *chargeable Contracts*, or Covenants which imply somewhat to be done or given on both Parts, the most ancient, and that whereby Trading and Commerce was carried on before the Invention of Money, was *Permutation* or *Bartering*, whereby, on each Side, something was given for some other Thing equivalent thereto. Altho' at this Day, since the Invention of Money, that Sort of *Exchange* is chiefly practis'd among Merchants, whereby Things are not simply compar'd between themselves, but they are first reduced to Money, and afterwards deliver'd as so much Money. But *reciprocal Donation* is a different Sort of a Thing from the Contract of Barter; for in this there is no Necessity that an *Equality* should be observ'd.

IX. *Buying and Selling.* L. N. N. l. 5. c. 5. § 2. Buying and *Selling*, is, When for Money the Property of any Thing is acquired, or else such a Right as is equivalent thereto; of which Kind this is the most plain and obvious; When the Buyer, after the Value is agreed upon, immediately pays down the Price, and the Seller thereupon delivers the Commodity. Yet oftentimes the Agreement is made so, that the Commodity shall be immediately delivered, and the Price thereof paid at a certain Time. And sometimes the Price is agreed upon, but the Delivery of the Thing or Commodity is to be within a certain Time limited. In which Case, it seems but Equity, that before the Time be elaps'd, the Seller should stand to the Hazard of it; but if, after the Time is elaps'd, the Buyer makes Delay, and neglects the taking it away, then, if the Commodity perishes, th Buyer shall

ſhall ſtand wholly to the Loſs thereof. Now to this of Buying and Selling, are wont to be added ſeveral other Kinds of Bargains: As that which is term'd *Addictio in diem*, whereby any Thing is ſold with this Proviſo, That it may be lawful for the Seller to accept of better Terms, offered by another within a certain Time. So alſo the *Lex Commiſſoria*, which is ſuch a Condition in any Contract, as not being perform'd within a Time limited, the Bargain becomes void. So likewiſe any Kind of Recalling, or Privilege of Recanting a Bargain, which is to be either ſo underſtood, That if the Price be laid down within a certain Time limited, or at any Time whatever is offer'd, the Buyer ſhall be obliged to reſtore it again to the Seller; or elſe ſo, as if the Thing be offer'd again, the Seller is bound to return back again the Price thereof; or ſo as if the Buyer be willing to ſell the ſame again, the firſt Seller ſhould have the Refuſal of it, before any other, which is likewiſe call'd *Jus Protimeſeos*, or the Right of Pre-emption. It is alſo cuſtomary that the Seller ſhould reſerve to himſelf a certain Portion of the Lands which he ſells, or ſome Uſe or Acknowledgement for the ſame.

THERE is another Way of Buying, which they call *Per Averſionem*, when ſeveral Things of different Prices are not valued ſingly, but at Hap-hazard, and, as it were, in the Lump.

IN that Way of Sale, which is call'd an *Auction*, the Thing is adjudged to that Perſon who, among ſeveral Bidders, offers moſt.

LASTLY, There is another Way of Buying, whereby not any certain Thing is bought, but only the probable Hopes and Expectation

thereof which implies something of *Chance*; so as neither the Buyer, if his Expectation fails him, nor the Seller, though it much exceed, hath any Reason to complain.

X. *Hiring and Letting.* L. N. N. l. 5. c. 6. § 1.

HIRING and *Letting*, is, *When the Use of a Thing, or any Labour is granted to another, upon a certain Consideration.*

1. THE usual Method is to agree beforehand, how much shall be received for doing the Thing propos'd; yet if any one makes no actual Bargain for what he undertakes to perform, or for the Use of any Thing he lends, he is suppos'd to expect so much as the common Custom allows, and for that to refer himself to the Honesty and Justice of the Person hiring.

2. HE who lets out a Thing, ought to take care, that it be in a serviceable Condition, and must therefore be content to undergo all Charges necessary to render it fit for Use. On the other Hand, the Person who hires the Thing, ought to be a good Husband in the Use of it; and if it be lost or damaged by his Fault, he is responsible for it. And for the same Reason, he who is hired to do any Work, if by his Fault it be spoil'd or damaged, must make it good.

3. IF a Man be hired only for some transient Business, which does not require his constant Attendance to perform, and any Mischance hinders him from performing what he undertook, he can have no Title to the *Wages* agreed for: But if a Man takes another into his Service for a continu'd Time, and he should, by Sickness or other Misfortune, be hinder'd from doing what he undertook, in common Humanity,

Humanity, he ought neither to be diſcarded, nor have his Wages refuſ'd or abated.

4. When any Thing let out happens wholly to periſh; from that Time, the Perſon hiring is no longer obliged to pay the Wages or Stipend agreed on. But if the Thing let out, has a known, certain, and determin'd Uſe aſſigned to it, for which Uſe the Owner is obliged to make it fit and ſerviceable; in this Caſe, if by any Misfortune it becomes leſs fit and proper for this Uſe, the Owner is obliged to abate of the agreed Price in ſuch Proportion as the Thing falls ſhort of the deſign'd Uſe. Thus, for Inſtance, I *hire* a Houſe to dwell in, which my *Landlord* is obliged to make habitable; if, in this Caſe, the Violence of a Storm, or my Neighbour's Fire, ſhould intercept the Uſe of it, I may fairly with-hold, in Proportion, ſo much of the *Rent* as I ſuffer by Want of the Uſe of the Houſe. But if the Profit or Increaſe of the Thing farmed out be uncertain, and have any Thing of Chance attending it, wherein, as a large Increaſe happens to the Advantage of the Hirer, ſo a ſmall one is to his Loſs; in ſuch Caſe there can be nothing deducted from the Penſion in Strictneſs of Law, upon the Account of Barrenneſs, eſpecially ſince a Dearth of one Year may be recompenced by the Plenty of another: Unleſs thoſe Accidents, which prevent the Increaſe, do but very rarely happen, and the Perſon hiring be preſumed not to have intended to run any manner of Riſk; and if ſo, it is but equitable that his Rent be abated, when ſuch uncommon and unforeſeen Accidents happen.

XI. *Things lent.* L. N. N. l. 5. c. 7. In a Contract of *Things* lent, Something is given to a certain Person upon this Condition, That he be obliged to restore the same *Kind* after a certain Time in the same *Quantity* and *Quality*. Now those Things which are usually lent, are called *Fungibiles*, that is, such Things as are capable of being repaid in Kind, though not in *Specie*; because any Thing of that Kind may so perform the Part of another Thing, that he who receives any Thing of that *Kind* in the same *Quantity* and *Quality*, may be said to have receiv'd the *same*, which he gave. The same Things are likewise determined and specified by Number, Weight, and Measure, in which Respect also they are commonly called *Quantities*, as they are contra-distinct to *Species*. Now a Thing is lent either *gratis*, so as no more is to be received than was deliver'd; or else for some Profit or Advantage, which is call'd *Usury*; and which is no Ways repugnant to the Law of Nature, provided it be moderate, and proportionable to the Gain, which the other Person makes of the Money or the Thing lent; or to that Gain I my self might have made with the same Money; or to the Loss I suffer by the Want of the present Use of it; or, lastly, that it be not exacted of *Poor Men*, to whom a Thing lent, is sometimes as good as an *Alms*.

XII. *Partnership.* L. N. N. l. 5. c. 8. In a Contract of *Partnership*, Two or more join together their *Money*, *Wares*, or *Works*, with an Intention that every one should receive a proportionable Share of the Profit; and if there happens to be any Loss, that likewise must be born ratably by each Party. In which indK of Society, as all Parties are obliged to Faithfulness

Faithfulneſs and Induſtry; ſo no Party muſt break off the Partnerſhip before the Time, or to the Detriment of his Partner. But when the Time of the Partnerſhip is expired, after the Gain and Loſs is allow'd, each Party is to receive what Stock he put in. But if one Perſon puts in *Money* or *Goods*, and the other contributes his *Labour*, we muſt conſider, after what Manner ſuch a Contribution was made. For when one Man's *Labour* is only concern'd about the Managing and Diſpoſing of the other Perſon's *Money* or *Goods*, the Shares of the Gain are ſo to be determin'd, as the Profit of the *Money* or *Commodity* bears Proportion to the Value of the *Labour*; the *Principal* ſtill remaining the Property of him only, who firſt contributed it. But when any Labour is beſtow'd in the *Improvement* of any Commodity, which is put in by another, he is ſuppos'd to have ſuch a Share in the Thing it ſelf, as is proportionable to the *Improvement* it has received. Again, when Men ingage all that they have in any Joint-Stock, as each of the Partners muſt faithfully bring into the Account the Profits they have made; ſo alſo every one of them is to be maintain'd out of the Joint-Stock according to their Condition. But when the Partnerſhip is broken off, the Diviſion of the Goods is made ratably, according as each Party at firſt brought in; without any Regard had, by whoſe Goods any Gain or Loſs happened to the Company, unleſs before-hand it was otherwiſe agreed.

XIII. *Contracts upon Chance.*

THERE are likewiſe ſeveral Contracts which imply a *Chance*: Amongſt which may be reckon'd

L. N. N. l. 5. c. 9. reckon'd * *Wagers*, when the Certainty of any Event, which is not yet known by either Party, is affirmed by one, and denied by the other, a Certain Value being laid on both Sides, it is adjudg'd to that Person, to whose Assertion the Event is found to agree. Hitherto may also be referr'd all Sorts of † *Games*, wherein we play for any Thing of Value. Among which, those have the least Chance which contain a Trial of *Wit*, *Dexterity*, *Skill*, or *Strength*. In some of these *Skill* and *Chance* have both a like Share. In others, *Chance* does chiefly determine the Matter. Altho' it is the Part of the Civil Magistrate to consider how far such Kind of Contracts may be tolerated, as consistent with the publick or private Good. Among these we may reckon the various Sorts of *Lotteries*; as either when several Men, having paid for a Thing by Money laid down jointly, refer it to a Decision by Lot, which of them shall have the Whole; or when a Box or Pot of Lots is made Use of, into which a certain Number of Lots or Papers, both Blanks and Prizes are put, and for some set Price, Liberty is granted of drawing them out, so that the

* A Wager shall be deem'd Good, though one of the Parties, who lay the Wager, knows perfectly the Truth of what he lays upon; unless he pretends himself ignorant or doubtful about it, in order to draw the other Party on to lay with him. See *L. N. N. l.* 5, *c.* 9. § 4.

† To make Games, and other Contracts, in which there is Hazard, lawful, it is not only necessary that what both Parties playing run the Risk of losing, be equal; but also, that the Danger of losing, and the Hope of gaining, on both Sides, bear a just Proportion with the Thing plaid for.

Person

Person drawing, may receive the Prize mark'd upon the Lot. To these Contracts, the receiv'd Methods of * *Insurance* have some kind of Affinity, which are such Bargains whereby is undertaken the securing from, and making good any Damage, so that the Insurer, for a certain Sum of Money paid down, takes upon himself, and is obliged to satisfie for whatsoever Losses or Damages any Commodities may undergo in their Transportation to remote Countries; so that if it shall happen that they be lost, he is bound to pay the Owner the Value of them.

XIV. *Sureties and Pledges.* L. N. N. l. 5. c. 10. § 8, 9, &c.

FOR the rendring of Contracts and Covenants more firm and secure, *Sureties* and *Pledges* are frequently made Use of. † A *Surety* is, when another Person, who is approv'd of by the Creditor, takes upon himself the Obligation of the principal Debtor; so that unless he makes Payment, the other must make it good; yet so, that the principal Debtor is obliged to repay him, and save him harmless. And altho' the Surety cannot stand bound for a greater Sum than the principal Debtor, yet nothing hinders but that the Surety is more firmly ty'd than the other, because more is rely'd upon his Credit, than upon that of the principal Debtor. Yet in course, the principal Debtor is to be call'd upon before the Surety, unless he has

* The Insurer may demand more or less, according as there is more or less Hazard run. But the Contract shall be null, if, at the Time of making thereof, the Insurer knew, that the Goods were safe arrived, or if the Owner of the Goods at that Time, knew that the Goods were lost.

† *Grotius de Jure Belli & Pacis,* l. 3. c. 20. § 59.

wholly

wholly taken the Obligation upon himſelf; and ſuch a Perſon in the Civil Law is commonly called *Expromiſſor*, or an Undertaker. Now if ſeveral Perſons be Security for one, each of them is to be call'd upon for his Proportion only; unleſs by Accident, any one of them becomes inſolvent, or is not to be found: For in ſuch a Caſe, the others muſt be charged with his Share.

XV. *Pledge or Mortgage.* L. N. N. l. 5. c. 10. § 13.

'T I s likewiſe oftentimes cuſtomary for the Debtor to deliver, or make over to the Creditor for the ſecuring his Debt, ſome certain Thing, which is call'd a *Pledge* or a *Mortgage*, until the Debt be paid. The Intent of which is, not only that the Debtor ſhould be excited to make Payment out of a Deſire of recovering what belongs to him; but alſo that the Creditor ſhould have ſome Proſpect how he may be ſatisfied. And upon this Account, Pledges ought regularly to be of equal, or greater Value than the Debt it ſelf. Now the Things which may be offer'd as Pledges, are either Improveable, or not Improveable: As to the former Kind, there is commonly added a Covenant called *Pactum* ἀντιχρήσεως, which impowers the Creditor to enjoy the Fruits and Profits of that Pledge, inſtead of *Intereſt*: Now as to the other Sort, the *Lex Commiſſoria* takes Place; which provides, That the Pledge ſhall be forfeited to the Creditor, if Payment be not made within a certain Time limited: And this is no ways unreaſonable, when the Pledge is not of greater Value than the Debt, together with the Uſe for the intermediate Time, and provided the Overplus be reſtored to the Owner. But as the Creditor is obliged to reſtore the Pledge upon

upon Payment of the Debt; so in the mean Time he ought to be as careful in the preserving thereof, as if it were really his own. And when there is no *Pactum* ἀντιχρήσεως, and the Thing be of that Nature, as to receive any Damage by Use, or if it be any way for the Debtor's Advantage, he ought not to make Use of it without his Consent. Now a *Mortgage* differs from a *Pledge* in this, That a *Pledge* consists in the Delivery of the Thing, but a *Mortgage*, though the Thing be not deliver'd, holds good by the bare Assignation of a Thing altogether immoveable, from which, Payment not being made, the Creditor may receive Satisfaction for his Debt.

AND thus what the Duties of Persons contracting are, will plainly appear from the End and Nature of these Contracts.

CHAP. XVI.

The several Methods by which the Obligations arising from Contracts are dissolved.

AMONG the several Ways of discharging Obligations arising from Contracts, and by which likewise the Duties and Offices which proceed from thence do utterly expire, the chiefest and most natural of all, is the *Fulfilling* or *Payment* of what was agreed upon. Where, although generally he that is the *Debtor*, is obliged

I. *Fulfilling or Payment.* L. N. N. l. 5. c. 11.

liged to make the Payment; yet, if it be perform'd by any other in *his Name* who contracted the Obligation, the same is dissolv'd; since 'tis no ways material by what Person the Thing is perform'd. Yet with this Proviso, That he who pays for another, without any Intention of bestowing it upon him, may demand from the same again what he laid out upon his Account. Moreover, Payment must be made to that Person to whom it is due, or else to one whom he has *appointed* to receive the Debt in his Name. And lastly, *That very Thing* must be perform'd or paid which was agreed upon, not any Thing else instead thereof, intire and not mangled, nor in Parcels, nor by Piece-meal; and likewise at the *Place* and *Time* appointed: Altho' frequently the *Courtesie* of the Creditor, or the *Inability* of the Debtor, may be the Occasion of prolonging the Time of Payment, or receiving a Debt by little Sums at once, or else of accepting of one Thing for another.

II. *Compensation.* L. N. N. l. 5. c. 11. § 5.

OBLIGATIONS are likewise taken away by * *Compensation*, which is an Adjusting or Balancing the Credit and the Debt, one against the other; or when the Debtor is therefore discharged, because 'tis manifest that the Creditor himself stands indebted to him for something that is of the same Kind, and of the same Value. Especially since in those *Things* (called *Res Fungibiles*, that is) which admit of being repaid in *Kind*, tho' not in *Specie*, an Equivalent is look'd upon to be the same Thing; and

* *Grotius de Jure Belli & Pacis*, l. 3. c. 19. § 15.

where

where the Debt is mutual, since I must presently return back as much as I have received, for the declining of unnecessary Payments, it seems to be the most convenient Way so to order the Matter, that each Party may keep what he has. Now it is evident, that those Things aforementioned, may very properly be brought to a Balance, of which the Time for Payment is either present, or past. But it is not so in other Things or Performances, which are of a different Nature; unless they are estimated on both Sides, and reduced to Money.

III. *Release.* L. N. N. l. 5. c. 11. § 7.

AN Obligation also ceases when the Thing is *released* and *forgiven* by him to whom it was due, and whose Interest it was that the Obligation should have been perform'd. And this is done either *expresly*, by some certain Tokens declaring his Consent; as by giving a Discharge, by giving up or cancelling the Bonds and Writings; or else *tacitly*, if he himself hinders, or is any ways the Occasion that what is owing to him cannot be paid.

IV. *Breaking off mutually.* L. N. N. l. 5. c. 11. § 8.

THOSE Obligations are likewise sometimes dissolved, which imply some Performance on both Sides, *by a mutual Breaking off* before any Thing on either Side be done in the Contract; unless this be expresly forbidden by the Laws. But if any Thing is performed by one of the Parties, the Obligation in this Case cannot be cancelled, unless he who perform'd his Part, releases the other, or has Amends made him some other Way.

V. *Falseness on one Side.*

BESIDES, an Obligation is not indeed properly dissolv'd, but rather broken off by the *Falseness* of either Party; for when the one does not perform what was agreed upon, neither

L. N. N. l. 5. c. 11. § 9.

ther is the other obliged to make good what he undertook upon a Proſpect of the other's performing. For as to the main Things which are to be performed in Contracts, the former are always included in the latter by way of *Condition*; as if it ſhould be ſaid, I will perform this, if you perform that firſt.

VI. *Caſe altered.* L. N. N. l. 5. c. 11. § 10.

OBLIGATIONS likewiſe ceaſe when that *State of Things* upon which they chiefly depended, is either *alter'd* by the Party who was obliged to perform ſomewhat, or by him to whom, or for whoſe Sake it was to be done.

VII. *Time.* L. N. N. l. 5. c. 11. § 11.

SOMETIMES alſo *Time* it ſelf puts an End to ſome Obligations, whoſe Duration depends upon a certain preciſe Day; unleſs it be prolong'd by the *expreſs* or *tacit Conſent* of each Party. Yet there is a Neceſſity that the Power of exacting the Obligation within the Time limited, ſhould ſtand good.

VIII. *Aſſignment.* L. N. N. l. 5. c. 11. § 13.

ANY one may make over by *Aſſignment*, his Debtor to his Creditor, provided he approves him, that he, inſtead of the other, may diſcharge the Debt. Where indeed there is required the Conſent of the Creditor, but not of that third Perſon who is the Debtor, whom I may turn over without his Knowledge or Conſent, to the other Perſon that is to accept him. For it is no great Matter *to whom* any Perſon makes Payment; but *from whom* the Debt is to be required, is very material.

IX. *DEATH.* L. N. N. l. 5. c. 11. § 12.

LASTLY, By *Death* those Obligations expire, which were founded in the Perſon of the Deceas'd; for the *Subject* being gone, the *Accidents* muſt neceſſarily follow, and the Performance is hereby rendred impoſſible in Nature. Yet oftentimes the Obligation that lay on the

Deceas'd,

Deceas'd, is continued to the Survivors; and this, either when the Survivor takes it upon him of his own Accord to preserve the Reputation of the Deceased, or for other Reasons; or when the Goods of the Deceased being made over to the Heir, the Incumbrance goes along with them.

CHAP. XVII.

Of Meaning, or Interpretation.

AS in all Commands and Directions which Men receive from their Superiors, no other Obligation is derived on them from thence, but such as is conformable to the Will and *Intention* of the Superior; so likewise, when any Man of his own free Will, sets himself under any Obligation, he is bound only to that which himself *intended*, when he entered into that Obligation. But then, because one Man cannot make a Judgment of another Man's Intention, but by such Signs and Actions as are apparent to the Senses; hence, therefore, every one, *in foro humano* is adjudged, To be *obliged to that Thing, which he may fairly be supposed to have suggested by a right Interpretation of the outward Signs made by him.* Wherefore 'tis of great Use for the true Understanding both of Laws and Covenants, and for the better Discharging the Duties thence arising, that there should

I. *Rules for Interpretation necessary.* L. N. N. l. 5. c. 12.

should be laid down * *Certain Rules for the true Interpretation of Words*, especially they being the most common and ordinary Signs whereby we express our Mind and Intention.

II. *Popular Terms.* L. N. N. l. 5. c. 12. § 3.

CONCERNING *Common* and *Vulgar Terms*, this is the Rule: Words are generally to be taken in their most proper and receiv'd Signification, which they have not so much from Analogy and Construction of Grammar, or Conformity of Derivation, as by Popular *Use* and *Custom* which is the Sovereign Comptroller and Judge of Speech.

III. *Terms of Art.* L. N. N. l. 5. c. 12. § 4.

TERMS *of Art* are to be explain'd according to the Definitions of Persons knowing in each Art. But if those Terms are differently defin'd by several Persons, for the avoiding of Disputes, 'tis necessary that we express in Vulgar Terms, what we mean by such a Word.

IV. *Conjectures.* L. N. N. l. 5. c. 12. § 6.

BUT for discovering the genuine Meaning of Words, 'tis sometimes necessary to make Use of *Conjectures*, if either the Words in themselves, or the Connexion of them, be ambiguous, and liable to a double Interpretation; or if some Parts of the Discourse seem to contradict the other, yet so as by a fair and true Explanation they may be *reconcil'd*. For where there is a plain and manifest Contrariety, the latter Contract vacates the former.

V. *Taken from the Subject Matter.*

NOW Conjectures of the Mind, and the right Meaning thereof in an ambiguous or intricate Expression, are chiefly to be taken *from the Subject Matter*, *from the Effects and the Ac-*

* *Grotius de Jure Belli & Pacis*, l. 2. c. 16.

cidents

cidents or Circumſtances. As to the *Matter*, this is the Rule: Words are generally to be underſtood according to the Subject Matter. For he that ſpeaks is ſuppos'd to have always in View the Matter of which he diſcourſes, and therefore agreeably thereunto, the Meaning of the Words is always to be applied.

L. N. N. l. 5. c. 12. § 7.

VI. *From the Conſequences.*

L. N. N. l. 5. c. 12. § 8.

As to the *Effects* and *Conſequences*, this is the Rule: When Words taken in the literal and ſimple Senſe, admit either of none, or elſe of ſome abſurd Conſequences, we muſt recede ſo far from the more receiv'd Meaning, as is neceſſary for the avoiding of a Nullity or Abſurdity.

VII. *From Circumſtances.*

L. N. N. l. 5. c. 12. § 9.

FARTHERMORE, moſt probable Conjectures may be taken from the *Circumſtances*; becauſe of Conſequence every one is preſum'd to be conſiſtent with himſelf. Now thoſe Circumſtances are to be conſider'd either as to their *Place*, or only as to the *Occaſion* of them. Concerning the former of theſe, this is the Rule: If the Senſe in any Place of the Diſcourſe be expreſs'd plainly and clearly, the more obſcure Phraſes are to be interpreted by thoſe plain and familiar ones. To this Rule there is another nearly related: In the Explaining of any Diſcourſe the Antecedents and Conſequents muſt be carefully heeded, to which thoſe Things that are inſerted between are preſum'd to anſwer and agree. But concerning the *latter*, this is the Rule: The *obſcure* Expreſſions of one and the ſame Man are to be interpreted by what he has deliver'd more clearly, though it was at another Time and Place; unleſs it manifeſtly appears that he has changed his Opinion.

VIII. *The Reason of the Thing.* L. N. N. l. 5. c. 12. § 10.

It is likewise of very great Use for finding out the true Meaning, in Laws especially, to examine into the *Reason of that Law*, or those Causes and Considerations which induced the Legislator to the making thereof; and more particularly when it is evident, that that was the *only Reason* of the Law. Concerning which, this is the Rule: That Interpretation of the Law is to be followed, which agrees with the Reason of that Law; and the contrary is to be rejected, if it be altogether inconsistent with the same. So likewise when the sole and adequate Reason of the Law ceases, the Law it self ceases. But when there are several Reasons of the same Law, it does not follow, that if one of them ceases, the whole Law ceases too, when there are more Reasons remaining, which are sufficient for the keeping it still in Force. Sometimes also the Will of the Law-giver is sufficient, where the Reason of the Law is conceal'd.

IX. *Words of various Signification.* L. N. N. l. 5. c. 12. § 11.

Moreover, it is to be observ'd, That many Words have *various Significations*, one Meaning being of great Latitude, and the other more *strict* and *confin'd*; and then the subject Matter is sometimes of a *favourable* Nature, sometimes *invidious*, sometimes between both or *indifferent*. Those are *favourable* where the Condition is equal on both Sides, where Regard is had to the publick Good, where Provision is made upon Transactions already ratified, and which tend to the promoting of Peace, and the like. The *Invidious*, or more distastful is that which aggrieves one Party only, or one more than the other; that which implies a certain Penalty, that which makes any Transaction of none Effect, or alters what went

went before; that which promotes Wars and Troubles. That which is between both and *Indifferent* is, That indeed which makes some Change and Alteration in the former State of Things, but 'tis only for the sake of Peace. Concerning these, this is the Rule: That those Things which admit of a *favourable* Construction, are to be taken in the largest and most comprehensive Meaning; but those Things which are capable of an unpleasing Construction, in the most literal and strictest Sense of the Words.

X. *Conjectures extended.* L. N. N. l. 5. c. 12. § 11.

THERE are likewise some Kind of Conjectures which are elsewhere to be fetch'd than from the Words, and which are the Occasion that the Interpretation of them is sometimes to be *extended*, and at other times to be *confin'd*: Although 'tis more easie to give Reasons why the Explanation thereof should be *confin'd* and *limited*, than *extended*. But the Law may be *extended* to a Case which is not express'd in the Law, if it be apparent, that the Reason which suits to this Case, was particularly regarded by the Law-giver amongst other Considerations, and that he did design to include the other Cases of the like Nature. The Law also ought to be *extended* to those Cases wherein the Subtlety of ill Men have found out Tricks in order to evade the Force of the Law.

XI. *Conjectures limited.* L. N. N. l. 5 c. 12. § 15.

NOW the Reason why some Expressions deliver'd in general Terms should be *restrain'd*, may happen either from the *original Defect of the Will*, or from the Repugnancy of some *emergent Case* to the Will and Intention. That any Person is to be presum'd not at first to have intended

intended any ſuch Thing, may be underſtood,

1. From the *Abſurdity*, which otherwiſe would follow from thence; and which, 'tis believ'd, no Man in his Wits could deſign. Hence general Expreſſions are to be reſtrain'd, inaſmuch as ſuch Abſurdity would thence otherwiſe ariſe.

2. From *Want of that Reaſon* which might chiefly cauſe him to be of that Mind. Hence in a general Expreſſion, thoſe Caſes are not comprehended, which do no ways agree with the ſole and adequate Reaſon of the Law.

3. From *Defect of Matter*, which always he that ſpeaks, is ſuppos'd to have conſider'd. And therefore all thoſe general Words are to be regarded with relation to the ſame.

XII. *Emergent Caſes,* L. N. N. l. 5. c. 12. 21. §

Now that an emergent State of Things is repugnant to the Intention of the Perſon who made the Conſtitution, may be diſcover'd either from *Natural Reaſon*, or elſe from ſome declared Mark and *Signification* of his Meaning.

The firſt happens, when we muſt exclude *Equity*, if ſome certain Caſes be not exempted from the univerſal Law. For *Equity* is the Correcting of what is defective in the Law by reaſon of its *Univerſality*.

And becauſe all Caſes could neither be foreſeen, nor ſet down, becauſe of the infinite Variety of them, therefore when general Words are apply'd to ſpecial Caſes, thoſe Caſes are to be look'd upon as exempt, which the Law-giver himſelf would likewiſe have exempted, if he had been conſulted upon ſuch a Caſe.

But we muſt not have Recourſe to *Equity*, unleſs there be very ſufficient Grounds for it. The Chiefeſt of which, is, If it be evident,

that

that the Law of Nature would be violated, if we followed too closely the Letter of that Law.

THE next Ground of Exception is, That though it be not indeed unlawful to keep to the very Words of the Law; yet, if, upon an impartial Consideration, the Thing should seem too grievous and burdensome, either to Men in general, or to some certain Persons; or else, if the Design be not of that Value, as to be purchas'd at so dear a Rate.

LASTLY, There are also some certain Signs of the Legislator's Will, from whence it may be certainly collected, That a Case ought to be excepted from the general Expressions of the Law; as when the Words of the Legislator in another Place, though not directly opposite to the Law now supposed to be before us, (for that would be a Contradiction) yet, by some peculiar Incident, and unexpected Event of Things, happen to oppose it in the present Case; or, which amounts to the same Thing, When there are two different Laws, which don't interfere, and which easily may and ought to be observ'd at different Times, but can't both of them be satisfy'd, when by some Chance, they call for our Obedience at the same Instant: In this Case we must observe some certain Rules to know which Law or Pact ought to give Place to the other, where both cannot be fulfill'd.

XIII. *Exception with Regard to Time.* L. N. N. l. 5. c. 12. § 23.

1. THAT *which is only permitted gives place to that which is commanded.*

2 THAT

1. This Rule is not true, unless we suppose the *Permission* general, and the *Command* particular. For it is certain, on the contrary, that a particular Permission

takes

2. THAT *which ought to be done at this present Time, is preferable to that which may be done at any other Time,*

3. *A Law forbidding the doing any Thing, is to be preferr'd before a Law directing the doing any Thing:* Or when an *affirmative* Precept can't be satisfy'd but at the Expence of a *negative* one, then the Performance of the *Affirmative*, shall be deferr'd or put off, 'till it ceases to clash with that other which is *Negative*. Thus I am commanded to be charitable, and I am commanded not to steal. If I have not wherewith to be charitable, unless I steal to give away, I lye under no Obligation to be charitable at that Time.

4. IN *Covenants and Laws, which are in other respects Equal, that which is particular and applicable to the present Case, takes Place of that which is General.*

5. WHEN *two Duties happen to interfere at the same Point of Time, that which is founded upon Reasons more honourable and beneficial is to be preferr'd.*

6. WHEN *two Covenants, one upon Oath, the other not, can't be perform'd both together, the former ought to take Place of the latter.*

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takes Place of a general Command; the Permission in this last Case, being an Exception to the Command; as in the former Case, the Command restrains the Extent of the Permission.

3. Here, likewise it must be distinguish'd, whether these Laws forbidding or commanding, be general or particular, as was laid down in the foregoing Note.

6. This Rule is not true, unless in such Case, where all other Circumstances are exactly equal. For when two Covenants are directly opposite, the latter shall be binding, whether the former be upon Oath, or not. But if the Two Covenants are not directly opposite, but only in some Respects different, the particular one shall be preferr'd before the general one.

7. AN

7. An *Obligation imperfectly mutual, gives Place to one that is perfectly mutual and binding on both sides.* Thus what I owe upon Contract, ought to be paid before what is due from me upon free Promise or Gratitude.

8. What *I am obliged to do out of Gratitude, must be preferr'd before what I am obliged to out of Generosity.*

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7. These Two last Rules are comprehended in the *Fifth*, of which they are, as is obvious, only Consequences.

The

THE
Whole Duty of MAN,
According to the
LAW of NATURE.

BOOK II. CHAP. I.

Of the Natural State of Men.

I. *Condition of MAN.* IN the next Place, we are to inquire concerning those Duties which are incumbent upon a Man with Regard to that *particular State* wherein he finds himself ordained by Providence to live in the World. What we mean by such *State*, is in general, That *Condition* or *Degree* with all its Relatives, in which Men being placed, they are therefore supposed to be obliged to these or those Performances: And such *State*, whatever it be, has some peculiar Rights and Offices thereunto belonging.

L. N. N. l. 1. c. 1. § 6, *&c.*

THE

THE *State* of Man then may be distinguish'd into either *Natural* or *Adventitious*. The natural State, by the Help of the Light of natural Reason alone, is to be considered as Threefold, Either as it regards *God our Creator*, or as it concerns *every single Man* as to *Himself*, or as it affects *other Men*; concerning all which we have spoken before. II. *Twofold. Natural and Adventitious.* L. N. N. l. 2. c. 3. § 24.

THE Natural State of Man consider'd in the *first* mention'd Way, is that Condition wherein he is placed by the Creator pursuant to his Divine Will, that he should be the most excellent Animal in the whole Creation. From the Consideration of which *State*, it follows, That Man ought to acknowledge the AUTHOR of his Being, to pay Him Adoration, and to admire the Works of His Hands; and moreover, to lead his Life after a different Manner from that of the Brutes. So that the contrary to this State is *the Life and Condition of Brutes.* III. *Natural State Threefold. First.*

IN the *second* Way we may contemplate the Natural *State* of Man, by seriously forming in our Minds an Idea of what his Condition would be, if every one were left * *alone* to himself without any Help from *other* Men. And in this Sense, the *Natural State* is opposed to *a Life cultivated by the Industry of Men.* IV. *Second.* L. N. N. l. 2. c. 2. § 2.

AFTER the *third* Way we are to regard the Natural Stare of Man, according as Men are understood to stand in respect to one another, merely from that common Alliance which results from the *Likeness* of their *Natures*, before any mutual Agreement made, or other Deed of V. *Third.*

* *See* Book I. Chap. III. § 3. *and the* References *made to it.*

Man,

Man perform'd, by which one could become obnoxious to the Power of another. In which Senſe, thoſe are ſaid to live reciprocally in a *State of Nature*, who acknowledge no *common Superior*, and of whom none can pretend Dominion over his Fellow, and who do not render themſelves known to each other, either by the doing of good Turns or Injuries. And in this Senſe it is, That a *Natural State* is diſtinguiſh'd from a *Civil State*, that is, *The State of Man in a Community.*

VI. *Conſider'd again Two ways* L. N. N. l. 2. c. 2. MOREOVER, the Property of this *Natural State* may be conſider'd, either as it is repreſented to us *notionally* and by way of *Fiction*, or as it is *really* and *indeed*. The *former* is done, when we imagine a certain Multitude of Men at the Beginning to have ſtarted up into Beings all at once without any Dependance upon one another, as it is fabled of the *Cadmean* Harveſt of Brethren; or elſe when we form a Suppoſition, that all the mutual Ties, by which Mankind are one way or other united together, were now diſſolv'd; ſo that every Man might ſet up for himſelf apart from the Reſt, and no one Man ſhould have any other Relation to his Fellow, but the Likeneſs of their Natures. But the true State of Nature, or that which is *really* ſo, has this in it, that there is no Man who has not ſome peculiar Obligations to *ſome* other Men, though with all the reſt he may have no farther Alliance than that they are Men, and of the ſame Kind; and, beſide what ariſes from thence, he owes them no Service at all. Which at this Time is the Caſe of many Kingdoms and Communities, and of the Subjects of the ſame, with reſpect to the Subjects of the other;

and

and the same was anciently the State of the Patriarchs, when they liv'd independently.

I T is then taken for manifest, that all Mankind never were universally and at once in the former *Natural State*; for those Children who were begotten and born of the Protoplasts, or first created Man and Woman, (from whom the whole Human Race derives its Original, as the *Holy Scriptures* tell us) were subject to the *Paternal Authority*. Not but that this Natural State arose afterwards among some People; for Men at first, in order to spread over this wide World, and that they might find for themselves and their Cattle more spacious Abodes, left the Families of their Fathers, and roaming into various Regions, almost every single Man became himself the Father of a Family of his own; and the Posterity of these again dispersing themselves, that *peculiar Bond* of Kindred, and the Natural Affections thence arising, by little and little were extinct, and no other Obligation remain'd, but that common one, which resulted from the Likeness of their Natures: 'Till afterwards, when Mankind was vastly multiplied, they having observ'd the many Inconveniences of that loose Way of living, the Inhabitants of Places near one another, by Degrees join'd in Communities, which at first were small, but grew soon greater, either by the voluntary or forced Conjunction of many which were lesser. And among these Communities, the State of Nature is still found, they being not otherwise obliged to each other, than by the common Tie of Humanity. VII *Paternal Authority*

N o w it is the chief *Prerogative* of those who are in the State of Nature, that they are sub- VIII. *Natural Liberty.*

ſubject and accountable to none but GOD only; in which reſpect alſo, this is call'd a State of *Natural Liberty*, by which is underſtood, that a Perſon ſo circumſtanced without ſome antecedent human Act to the contrary, is to be accounted abſolutely in his own Power and Diſpoſition, and above the Controll of all mortal Authority. Therefore alſo any one Perſon is to be reputed *equal* to any other, to whom himſelf is not ſubject, neither is that other ſubject to him.

AND farthermore, whereas Man is indued with the Light of Reaſon, by the Guidance whereof he may temper and regulate his Actions, it follows, That whoſoever lives in a State of Natural Liberty, depends not on any other for the Direction of his Doings; but is veſted with a Right to do, according to his own Judgment and Will, any Thing he ſhall think good, and which is conſonant to ſound Reaſon.

AND whereas Man, from that univerſal Inclination which is implanted in all living Creatures, cannot but, in order to the Preſervation of his Perſon and his Life, and to the keeping off whatſoever Miſchiefs ſeem to threaten the Deſtruction thereof, take the utmoſt Care and Pains, and apply all neceſſary Means to that End; and yet whereas no Man in this Natural State has any ſuperiour Perſon, to whom he may ſubmit his Deſigns and Opinions, therefore every one in this State makes uſe of his own Judgment only, in determining concerning the Fitneſs of Means, whether they conduce to his Self Preſervation or not. For though he may give ear to the Advice of another, yet it is in his Choice, whether he will approve or reject the ſame. But that this abſolute Power of Governing

verning himself be rightly managed, it is highly necessary, That all his Administrations be moderated by the Dictates of true Reason, and by the Rules of the Law of Nature.

IX. *Its Inconveniences.*

AND yet this Natural State, how alluring soever it appears to us with the Name of LIBERTY, and flattering us with being free from all manner of Subjection, was clogg'd, before Men join'd themselves under Governments, with many *Inconveniences*; whether we suppose every single Man as in that Condition, or only consider the Case of the Patriarchs or Fathers of Families, while they liv'd independent. For if you form in your Mind the Idea of a Man, even at his full Growth of Strength and Understanding, but without all those Assistances and Advantages by which the Wit of Man has rendred Human Life much more orderly and more easie than at the Beginning; you shall have before you, a naked Creature no better than dumb, wanting all Things, satisfying his Hunger with Roots and Herbs, slacking his Thirst with any Water he can find, avoiding the Extremities of the Weather, by creeping into Caves, or the like, exposed an easie Prey to the ravenous Beasts, and trembling at the Sight of any of them.

L. N. N. l. 1. c. 3. § 3.

'TIS true, the Way of Living among the Patriarchs, might be somewhat more comfortable, even while they contain'd their Families apart; but yet it could by no Means be compar'd with the Life of Men in a *Community*; not so much for the Need they might have of Things from abroad, which, if they restrain'd their Appetites, they might perhaps well enough bear withal; as because in that State they could

have

have little Certainty of any continu'd Security.

AND, that we may comprehend all in a few words, In a *State of Nature*, every Man must rely upon his own single Power; whereas in a *Community*, all are on his Side: There no Man can be sure of injoying the Fruit of his Labour; here every one has it secur'd to him: There the *Passions* rule, and there is a continual Warfare, accompanied with Fears, Want, Sordidness, Solitude, Barbarity, Ignorance, and Brutishness; here *Reason* governs, and here is Tranquillity, Security, Wealth, Neatness, Society, Elegancy, Knowledge, and Humanity.

X. *Uncertainty of the State of Nature.* NOW though it was the Will of Nature itself, that there should be a Sort of *Kindred* amongst all Mankind, by Virtue of which they might be obliged at least not to hurt one another, but rather to assist and contribute to the Benefit of their Fellows; yet this Alliance is found to be but of little Force among those who live promiscuously in a State of *Natural Liberty*; so that any Man who is not under the same Laws and Possibilities of Coercion with our selves, or with whom we live loosely and free from any Obligation in the said State, is not indeed to be treated as an *Enemy*, but may be look'd upon as a *Friend*, not too freely to be *trusted*. And the Reason hereof is, That Man not only is accomplish'd, with an Ability to do Mischief to his Like, but for many Causes has also a Will so to do: For some, the Pravity of their Natures, Ambition, or Covetousness, incite to make Insults upon other Men; others, though of a meek

L. N. N. l. 1. c. 3. § 4.

and

and modest Nature, are forced to use Violence either in defending themselves from imminent Outrages, or by way of Prevention.

BESIDE that, a Rivalship in the Desire of the same Thing in some; and in others, Competition for Priority in one Quality or other, shall set them at Variance. So that in this State, 'tis hardly possible but that there should be perpetual Jealousies, Mistrusts, Designs of undoing each other, Eagerness to prevent every one his Fellow, or Hopes of making Addition to his own Strength by the Ruin of others.

THEREFORE as it is the Duty of every *honest* Man to be content with his own, and not to give Provocation to his Neighbour, nor to covet that which is his; so also it behoves him who would be as *wary* as is needful, and who is willing to take Care of his own Good, so to take all Men for his Friends, as not to suppose yet but that the same may quickly become his Enemies; so to cultivate Peace with all Men, as to be provided though it be never so soon changed to Enmity. And for this Reason, happy is that Commonwealth, where in Times of Quietness, Consideration is had of Requisites for War.

XI. *Most convenient Remedy in Controversies.* L. N. N. l. 5. c. 13.

BESIDE, in the *Natural State*, if any one either will not voluntarily make good what he has *covenanted* to do, or does another an *Injury*, or if upon any other Account some Dispute arise; there's no Man has Authority to force the naughty Person to perform his Bargain, to cause him to repair the Wrong, or to determine the Controversy; as there is in *Communities*, where I

may have recourſe for Help to the Civil Magiſtrate.

And here, becauſe Nature allows not that upon every Occaſion we ſhould betake our ſelves to *violent Means*, even though we are very well ſatiſfy'd in our Conſciences of the Juſtice of our Cauſe; therefore we are firſt to try, whether the Matter may not be compoſed after a milder Way, either by an amicable Reaſoning of the Point in Queſtion between the Parties themſelves, or by a free and unconditional Compromiſe, * or *Reference* of the Debate to *Arbitrators*. And theſe Referees are to manage the Matter with an equal Regard to both Sides, and in giving their Award, they are to have an Eye only to the Merits of the Cauſe, ſetting aſide all partial Animoſity or Affection. For which Reaſon, it is not beſt to chuſe any Man an Arbitrator in ſuch a Cauſe wherein he ſhall have greater Hopes of Profit or particular Reputation, if one Party get the better, rather than the other; and conſequently where it is his Intereſt that that Litigant, at what Rate ſoever, gain the Point. Hence alſo there ought not to be any underhand Bargain or Promiſe between the Umpire and either of the Parties, by which he may be obliged to give his Judgment on the behalf of the ſame.

Now in this Affair, if the Arbitrator cannot find out the Truth in Fact, neither from the Confeſſions of the Parties, nor from apparent Writings, nor any other manifeſt Argu-

* See *Grotius de Jure Belli & Pacis, lib. 2. cap. 23. §6, &c.*

ments

ments and Signs; he muſt then inform himſelf by the Teſtimonies of Witneſſes; whom, though the Law of Nature obliges, eſpecially being uſually reinforced by the Religion of an Oath, to ſpeak the Truth; yet it is moſt ſafe not to admit the Evidence of ſuch as are ſo peculiarly affected to one Party, that their Conſciences will be forced to ſtruggle with the Paſſions either of Love, Hatred, Deſire of Revenge, any violent Affection of the Mind, or elſe ſome ſtrict Friendſhip or Dependance; all, or any of which every Man is not endued with Conſtancy enough to ſurmount.

CONTROVERSIES alſo are frequently made an end of by the *Interpoſition* of the common *Friends* of each Party, which to do, is deſervedly accounted among the beſt Actions of a good Man. For the reſt, in the *Natural State*, when Performances are not made good by either Side of their own Accord, the other ſeeks his Due after what manner he likes beſt.

CHAP. II.

Of the Duties *of the* Married State.

I. *Matrimony.* L. N. N. l. 6. c. 1. AMONG those States of Man which we have call'd *Adventitious*, or in which a Man is placed by some antecedent human Act, MATRIMONY obtains the first Place. * Which also is the chief Representation of the Social Life, and the Seed-Plot of Mankind.

II. *Instituted by Nature.* AND, first, it is certain, That that ardent Propensity found to be in both Sexes to each other, was not implanted in them by the All-wise CREATOR, merely that they might receive the Satisfaction of a vain Pleasure; for had it been so, nothing could have been the Occasion of greater Brutishness and Confusion in the World; but that hereby Married Persons might take the greater Delight in each other's Company; and that both might with the more Chearfulness apply themselves to the necessary Business of Propagation, and go through those Cares and Troubles which accompany the Breeding and Education of Children. Hence it follows, That all Use of the Parts destin'd by Nature for this Work, is contrary to the Law Natural, if it tends not to this End. On which Account also, are forbidden all Lusts for a different *Species*, or for the same Sex; all filthy Pollutions; and indeed, all Copulations

* *Grotius de Jure Belli & Pacis*, l. 2. c. 5. § 9. &c.

out

out of the State of Matrimony, whether with the mutual Consent of both Parties, or against the Will of the Woman.

III. *Obligation to Matrimony.* L. N. N. l. 6. c. 1. § 3.

THE *Obligation* under which we lye to contract *Matrimony*, may be consider'd either with respect to *Mankind* in general, or to our particular *Station* and *Relation* in the World. The Strength of the former of these, consists in this, That the Propagation of Mankind, neither can nor ought to be kept up by promiscuous and uncertain Copulations, but is to be limited and circumscribed by the Laws of *Wedlock*, and only to be endeavour'd in a married State: For without this no Man can imagine any Decency or orderly Society among Men, nor any Observation of the Civil Rules of Life.

BUT Men *singly* consider'd, are obliged to enter the Matrimonial State, when a convenient Occasion offers it self; whereto also not only a mature Age, and an Ability for Generation-Work is necessary, but there ought beside to be a Possibility of lighting on a Person of the like Condition, and a Capacity of maintaining a Wife, and the Posterity she shall bring forth; and that the Man may be such a one as is fit to become the Master of a Family.

NOT still, but that any Man is excepted from this Duty, who betakes himself to a chaste SINGLE LIFE, finding his Constitution accommodated thereto, and that he is capable in that, rather than in the Married State, to be useful to Mankind, or to the Commonwealth; especially also, if the Case be so, that there is no Fear of the Want of People.

IV. *Matrimonial Contract.*

BETWEEN those who are about to take upon themselves the Married State, a *Contract* ought,

L. N. N. l. 6. 1. § 9.

ought, and is wont to intervene; which, if it be *Regular* and *Perfect*, consists of these Heads:

FIRST, Because the Man (to whom it is most agreeable to the Nature of both Sexes, that the Contract should owe its Original) intends hereby to get himself Children of his own, not spurious or supposititious; therefore the Woman ought to *plight her Troth* to the Man, That she will permit the Use of her Body to no other Man but to him; the same, on the other Hand, being requir'd of the Husband.

AND, Secondly, Since nothing can be more flatly contrary to a Social and Civil Life, than a vagabond, desultory, and changeable Way of Living, without any Home, or certain Seat of his Fortunes; and since the Education of that which is the Off-spring of both, is most conveniently taken Care of by the joint Help of both Parents together: And whereas continual Cohabitation brings more of Pleasure and Comfort to a Couple who are well match'd, whereby also the Husband may have the greater Assurance of his Wife's Chastity; therefore the Wife does moreover ingage her Faith to her Husband, That she will *always cohabit* with him, and join her self in the strictest Bond of Society, and become of the same Family with him. And this mutual Promise must be supposed to be made from the Husband to her of the like Cohabitation, the Nature of this State so requiring.

BUT because it is not only agreeable to the natural Condition of both Sexes, that the Case of the Husband should be the more Honourable of the two; but that he should also be the Head of

of the Family, of which himself is the Author; it follows, That the Wife ought to be subject to his Direction in Matters relating to their mutual State and to their Household. Hence it is the Prerogative of the Husband, to chuse his Habitation, and she may not against his Will, wander abroad, or lodge apart.

YET it does not seem essentially necessary to Matrimony, that the Man should have Power of Life and Death, or of inflicting any grievous Punishment, as neither of disposing at his Pleasure of all the Estate or Goods of his Wife: But these Points may be settled between the Married Couple, by peculiar Agreements, or by the municipal Laws of the Place.

V. *One Man and one Woman.* L. N. N. l. 6. c. 1. § 19.

NOW tho' 'tis manifestly repugnant to the Law of Nature, that one Woman should have more Men than one at once; yet it obtain'd among the *Jews* of old, and many other Nations, that one Man might have two or more Wives. Nevertheless, let us allow never so little Weight to Arguments brought from the primitive Institution of Marriage deliver'd in *Holy Writ*; * yet it will appear from *right Reason*, That 'tis much more decent and fit for one Man to be content with one Woman. Which has been approved by the Practice of all the Christians through the World, that we know of, for so many Ages.

VI. *Contract perpetual.* L. N. N. l. 6. c. 1. § 20, 21.

NOR does the Nature of this strict Union tell us less plainly, That the Bond of *Matrimony ought to be perpetual*, and not to be unloosed,

* See *Element. jurisprud. universal.* l. 11. § 7. *Apol.* § 29. *Eris Scandica*, P. 48. & seq. p. 109.

but by the Death of one Party; except the *essential Articles* of the principal Matrimonial Covenant be violated, either by *Adultery*, or a wicked and dishonest *Desertion*. But for *ill Dispositions*, which have not the same Effect with such *lewd Desertion*, it has obtained among Christians, that a Separation from Bed and Board shall be sufficient, without allowing any Ingagement in a new Wedlock. And one great Reason hereof, among others, is this, That too free a Liberty of Divorce might not give Incouragement to either Party to cherish a stubborn Temper; but rather, that the irremediable State of each, might persuade both to accommodate their Humours to one another, and to stir them both up to *mutual* Forbearance. For the rest, if any essential Article of the Matrimonial Contract be violated, the *wronged Party* only is discharged from the Obligation; the same still binding the other, so long as the former shall think good.

VII. *Moral Impediments.* L. N. N. l. 6. c. 1. § 27.

Any Man may contract with any Woman, where the Law makes no special Prohibition, if their Age and Constitution of Body render them capable of Matrimony, except some *Moral Impediment* be in the Way: Presupposing, That he or she is under a Moral Impediment, who are already married to some other Person.

VIII. *Kindred.* L. N. N. l. 6. c. 1. § 28.

And it is accounted a Moral Impediment of lawful Matrimony, if the Parties are *too nearly allied by Blood or by Affinity*. On which Score, even by the Law of Nature, those Marriages are accounted incestuous and wicked, which are contracted between any Persons related in the *Ascending* or *Descending* Line. And for

for those in the other *transverse Order*, as with the Aunt, either on the Father's or Mother's Side, the Sister, *&c.* As also those in *Affinity*, as, with the Mother-in-law, Step-Mother, Step-Daughter, *&c.* Not only the positive Divine Law, but that of most civiliz'd Nations, with whom also all Christians agree, does abominate. Nay, the Special Laws of many Countries forbid Marriage even in the more remote Degrees, that so they may keep Men from breaking in upon those which are more sacred, by setting the Barrier at a greater Distance.

Now as the Laws are wont to assign to other Contracts and Bargains some *Solemnities*, which being wanting, the Act shall not be adjudged of Validity: So also it is in Matrimony, where the Laws require, for the sake of Decency and good Order, that such or such *Ceremonies* be performed. And these, though not injoined by the Law Natural, yet without the same, those who are Subjects of such a Community, shall not consummate a legal Matrimony; or at least, such Contract shall not be allowed by the Publick to be effectual. IX. *Ceremony.*

It is the Duty of a *Husband* to love his Wife, to cherish, direct and protect her; and of the *Wife* to love and honour her Husband, to be assistant to him, not only in begetting and educating his Children, but to bear her Part in the Domestick Cares. On both sides, the Nature of so strict an Union requires, That the Married Couple be Partakers as well in the good as ill Fortune of either, and that one succour the other in all Cases of Distress; moreover, That they prudently accommodate their Humours to each X. *Mutual Duties.*

each other; in which Matter, it is the Wife's Duty to submit.

CHAP. III.

Duty *of* Parents *and* Children.

I. *Paternal Authority.* L. N. N. l. 6. c. 2. FROM MATRIMONY proceeds POSTERITY, which is subjected to the *Paternal Power*, * the most Ancient and the most Sacred Kind of Authority, whereby Children are obliged to reverence their Parents, to obey their Commands, and to acknowledge their Pre-eminence.

II. *Its Foundation Twofold.* THE Authority of Parents over their Children, hath its chief Foundation on a *Twofold Cause*.

FIRST, Because the Law of Nature it self, when Man was made a Sociable Creature, injoin'd to *Parents the Care of their Children*; and lest they should herein be negligent, Nature implanted in them a most tender Affection for their Issue. Now that this Care may be rightly managed, it is requisite that they have a Power of ordering the Actions of their Children for their Good; because these, as yet, understand not, for want of *Discretion*, how to govern themselves.

NEXT, This Authority is also grounded on the *tacit Consent of their Offspring*. For it may

* *Grotius de Jure Belli & Pacis*, l. 2. c. 5. § 1, &c.

fairly

fairly be presum'd, that if an Infant, at the Time of its Birth, had the Use of its Reason, and saw that its Life could not be preserv'd without the Care of the Parents, to which must be join'd a Power over it self, it would readily consent to the same, and desire for it self a comfortable Education from them. And this Power is *actually* in the Parents, then when they breed and nurse up the Child, and form him as well as they can, that he may become a fit Member of Human Society.

III. *Which Parent has greater Right.* L. N. N. l. 6. c. 2. § 4.

BUT whereas the Mother concurs no less than the Father to the Generation of Children, and so the Offspring is common to both, it may be inquir'd, *Which hath the greatest Right thereto?* Concerning which Point we are to distinguish: For if the Issue were begotten *not in Matrimony*, the same shall be rather the Mother's, because here the Father cannot be known, except the Mother discover him. Among those also who live in a State of *Natural Liberty*, and above Laws, it may be agreed, that the Mother's Claim shall be preferr'd to that of the Father. But in *Communities*, which have their Formation from Men, the Matrimonial Contract regularly commencing on the Man's Side, and he becoming the Head of the Family, the *Father's Right* shall take Place, so as though the Child is to pay the Mother all Reverence and Gratitude, yet is it not obliged to obey her, when she bids that to be done which is contrary to the just Commands of the Father. Yet upon the Father's Decease, his Authority over his Child, especially if not of Age, seems to devolve upon the *Mother*, and if she marry again, it passes to the *Step-Father*, he being esteemed

esteemed to succeed to the Trust and Care of a Natural Father. And he who shall allow liberal Education to an Orphan or a forsaken Child, shall have a Right to exact *filial Obedience* from the same.

IV. *Paternal Authority distinguish'd.* L. N. N. l. 6. c. 2. § 6. But that we may handle more accurately the *Power of Parents over their Children,* we must distinguish, first, between *Patriarchs,* or Chiefs of independent Families; and such as are *Members of a Community*; and then betwixt the *Power* of a *Father,* as *Father,* and his Power as *Head of his Family.* And whereas it is injoyn'd by Nature to a *Father as such,* That he bring up his Children well, in order to render 'em fit Members of Human Society, so long as 'till they can take Care of themselves; hence he has so much Power given him over them, as is necessary for this End; which therefore by no means extends it self so as to give the Parents Liberty to destroy their unborn Offspring, or to cast away or kill it when it is born. For though it is true, the Issue is of the Substance of the Parents, yet it is placed in a Human State equal to themselves, and capable of receiving Injuries from them. Neither also does this Authority vest them with the Exercise of a Power of Life and Death, upon Occasion of any Fault, but only allows them to give moderate Chastisement; since the Age we speak of is too tender to admit of such heinous Crimes as are to be punished with Death. But if a Child shall stubbornly spurn at all Instruction, and become hopeless of Amendment, the Father may turn him out of his own House, and abdicate or renounce him.

MORE-

V. *Childhood.* L. N. N. l. 6. c. 2. § 7.

MOREOVER, This Power, thus nicely taken, may be considered according to the *diverse Age of Children.* For in their *early Years,* when their Reason is come to no Maturity, all their Actions are subject to the Direction of their Parents. During which Time, if any Estate fall to the young Person, it ought to be put into the Possession, and under the Administration of the Father, so that the Property be still reserved to the Child; tho' it may be reasonable enough that the Profits arising therefrom should be the Father's till the other arrive at Manhood. So also any Advantage or Profit that can be made by the Labour of a Son, ought to accrew to the Parent; since with the Latter lies all the Care of maintaining and of educating the Former.

VI. *Manhood.* L. N. N. l. 6. c. 2. § 11.

WHEN Children are come to *Man's Estate,* when they are indued with a competent Share of Discretion, and yet continue themselves a Part of the Father's Family, then the Power which the Father hath comes differently to be considered, either as he is a *Father,* or as *Head* of the Family. And since in the former Case he makes his End to be the Education and Government of his Children, it is plain, That when they are of *ripe Years,* they are to be obedient to the Authority of their Parents, as wiser than themselves. And whosoever expects to be maintain'd upon what his Father has, and afterwards to succeed to the Possession of the same, is obliged to accommodate himself to the Methods of his Paternal Household; the Management whereof ought to be in his Father's Power.

PATRI-

VII. *Patri-archs Power abridged.* L. N. N. l. 6. c. 2. § 6.

PATRIARCHS, or *Heads* of independent Families, before they join'd in Communities, acted in many Cases after the manner of *Princes*, in their Houses. So that their Progeny, who continued a Part of their Families, paid the highest Veneration to their Authority. But afterward, this Family-Royalty (as well as some other private Rights) was moderated for the Benefit and Order of Communities; and in some Places more, in others less of Power was left to Parents. Hence we see that, in some Governments, Fathers have in Criminal Cases a Power of Life and Death over their Children; but in most it is not allowed, either for fear Parents should abuse this Prerogative to the Detriment of the Publick, or to the unjust Oppression of those so subjected; or, lest thro' the Tenderness of Paternal Affection, many Vices should pass unpunished, which might break forth one time or other into publick Mischiefs; or else, that Fathers might not be under a Necessity of pronouncing sad and ungrateful Sentences.

VIII. *Marriage with Parents Consent.* L. N. N. l. 6. c. 2. § 14.

AND as the Father ought not to *turn his Child out of his Family*, while he stands in Need of Education and Assistance from him, without the most weighty Reasons; so also ought not the Son or Daughter leave the Parent's House without his Consent. Now whereas Children frequently leave their Father's Family on Occasion of Matrimony; and since it much concerns Parents what Persons their Children are married to, and from whom they are to expect Grand-Children; hence it is a Part of filial Duty, herein to *comply with the Will of the Parents*, and not to marry without their Consent. But if

if any do actually contract Matrimony against their Liking, and consummate the same, such Marriage seems not to be void by the Law of Nature, especially if they intend to be no longer burthensome to their Parents, and that for the rest their Condition be not scandalous. So that if in any Country such Marriages are accounted null and void, it proceeds from the Municipal Laws of the Place.

IX. *Piety ever due to Parents.* L. N. N. l. 6. c. 2. § 12.

B U T when a *Son* or *Daughter have left their Father's House*, and either have set up a new Family of their own, or joined to another; the Paternal *Authority* indeed ceases, but Piety and Observance is for ever due, as being founded in the Merits of the Parents, whom Children can never or very seldom be supposed to requite. Now these Merits do not consist in this only, That a Parent is to his Child the Author of Life, without which no Good can be injoyed; but that they bestow also a chargeable and painful Education upon them, that so they may become useful Parts of Human Society; and very often lay up somewhat for them, in order to make their Lives more easie and comfortable.

X. *Education intrusted.* L. N. N. l. 6. c. 2. § 6.

A N D yet, though the Education of Children be a Duty laid upon Parents by Nature it self, it hinders not but that, either in Case of Necessity, or for the Benefit of the Children, the Care thereof may by them be *intrusted with another*; so still that the Parent reserve to himself the Oversight of the Person deputed. Hence it is, that a Father may not only commit his Son to the *Tutorage* of proper Teachers; but he may give him to another Man to *adopt* him, if he perceives it will be advantagious to him.

him. And if he have no other Way to maintain him, rather than he should die for Want, he may *hire* him out for Wages, or sell him into some tolerable Servitude, reserving still a Liberty of redeeming him, as soon as either himself shall be able to be at the Charge, or any of his Kindred shall be willing to do it. But if any Parent shall inhumanly expose and forsake their Child, he who shall take it up and educate it, shall have the *Fatherly Authority* over it; so that the Foster Child shall be bound to pay filial Obedience to his *Educator*.

XI. *Duty of Parents.* THE Duty of *Parents* consists chiefly in this, That they maintain their Children handsomly, and that they so form their Bodies and Minds by a skilful and wise Education, as that they may become fit and useful Members of Human and Civil Society, Men of Probity, Wisdom, and good Temper. So that they may apply themselves to some fit and honest Way of Living, by which they may, as their Genius and Opportunity shall offer, raise and increase their Fortunes.

XII. *Duty of Children.* ON the other Hand, 'tis the Duty of *Children* to honour their Parents, that is, to give them Reverence, not only in outward Shew, but much more with a hearty Respect, as the Authors not only of their Lives, but of many other invaluable Benefits to 'em; to obey 'em; to be assistant to 'em to their utmost, especially if they are Aged, or in Want; not to undertake any Business of Moment, without paying a Deference to their Advice and Opinion; and, lastly, To bear with Patience their Morosenes, and any other their Infirmities, if any such be.

CHAP. IV.

The Duties *of* Masters *and* Servants.

AFTER Mankind came to be multiplied and it was found how conveniently Domestic Affairs might be managed by the Service of other Men, * it early became a Practice to *take Servants into a Family*, to do the Offices belonging to the House. These at first probably offer'd themselves, driven thereto by Necessity, or a Consciousness of their own Want of Understanding; but upon being assur'd that they should constantly be supplied with Food and Necessaries, they devoted all their Services for ever to some Master: And then Wars raging up and down the World, † it grew a Custom with most Nations, that those *Captives*, to whom they granted their Lives, should be made Slaves ever after, together with the Posterity born of them; though in many Countries, no such Servitude is in Use; but all Domestic Offices are perform'd by mercenary Servants hired for a certain Time.

I. *Servile State how begun.* L. N. N. l. 6. c. 3.

Now as there are several *Degrees*, as it were, of *Servitude*, so the Power of the Masters, and the

II. *A Tempo*

* *Grotius de Jure Belli & Pacis.* lib. 2. cap. 5. § 27, &c.

† *Grotius de Jure Belli & Pacis*, lib. 3. cap. 14. § 1, &c.

rary Servant. L. N. N. l. 6. c. 3. § 4. the Condition of the Servants do vary. To a *Servant hired* for a Time, the Duty of the Master is to pay him his *Wages*; the other making good on his Part the *Work* as agreed for: And because in this Contract the Condition of the Master is the better, therefore such Servant is also to pay Respect to his Master according to his Dignity; and if he have done his Business knavishly or negligently, he is liable to Punishment from him; provided it go not so far as any grievous Maiming of his Body, much less so far as Infliction of Death.

III. *A Voluntary Perpetual Servant.* But to such a Servant as *voluntarily offers himself to perpetual Servitude*, the Master is obliged to allow perpetual Maintenance, and all Necessaries for this Life; it being his Duty on the other hand to give his constant Labour in all Services whereto his Master shall command him, and whatsoever he shall gain thereby, he is to deliver to him. In thus doing, however, the Master is to have a Regard to the Strength and Dexterity of his Servant, not exacting rigorously of him what is above his Power to do. Now this Sort of Servant is not only subject to the Chastisement of his Master for his Negligence, but the same may correct his Manners, which ought to be accommodated to preserve Order and Decency in the Family: But he may not sell him against his Will; because he *chose this* for his Master of his own Accord, and not another; and it concerns him much with whom he serves. If he have been guilty of any heinous Crime against one not of the same Family, he is subject to the Civil Power, if he live in a Community; but if the Family be independent, he may be expell'd. But if the Crime be against

gainſt the ſame Family, it being independent, the Head thereof may inflict even Capital Puniſhment.

CAPTIVES *in War* being made *Slaves*, are frequently treated with greater Severity, ſomething of a hoſtile Rage remaining towards 'em, and for that they attempted the worſt upon us and our Fortunes. But as ſoon as there intervenes a *mutual Truſt*, in order to Cohabitation in the Family, between the Victor and the vanquiſh'd Perſon, all paſt Hoſtility is to be accounted as forgiven: And then the Maſter does Wrong even to a Servant thus acquir'd, if he allow him not Neceſſaries for Life, or exerciſe Cruelty to him without Cauſe, and much more if he take away his Life, when he has commited no Fault to deſerve it. IV. *Captive Slaves* L. N. N. l. 6. c. 3. § 7

IT is alſo the Practice to paſs away our Property in ſuch *Slaves* who are taken in War, or bought with our Money, to whom we pleaſe, after the ſame manner as we do our other Goods and Commodities; ſo that the *Body of ſuch Servant* is holden to be a Chattel of his Maſter. And yet here *Humanity* bids us not to forget that this Servant is a MAN, however, and therefore ought not to be treated as we do our Moveables, uſe 'em or abuſe 'em, or deſtroy 'em as we liſt. And when we are minded to part with him, we ought not to deliver him into the Hands of ſuch, as we know will abuſe him inhumanly and undeſervedly. V. *Alienable*

LASTLY, 'Tis every where allow'd, That the *Progeny* of Parents who are Bondmen, are alſo in a *ſervile State*, and belong as Slaves to the Owner of their Mother. Which is juſtified by this Maxim, That whoſoever is Propri- VI. *Offſpring of Slaves.* L. N. N. l. 6 c. 3. § 9.

etor of the Body, is alſo Proprietor of whatſoever is the Product thereof; and becauſe ſuch Iſſue had never been born, if the Maſter had executed the Rigor of War upon the Parent; and for that the Parent having nothing ſhe can call her own, the Offſpring cannot otherwiſe be brought up but at her Maſter's Charge. Whereas, therefore, the Maſter afforded ſuch Infant Nouriſhment, long before his Service could be of any Uſe to him; and whereas all the following Services of his Life could not much exceed the Value of his Maintenance, he is not to leave his Maſter's Service without his Conſent. But 'tis manifeſt, That ſince theſe Bondmen came into a State of Servitude not by any Fault of their own, there can be no Pretence that they ſhould be otherwiſe dealt withal, than as if they were in the Condition of perpetual hired Servants.

CHAP. V.

The Impulſive Cauſe *of* Conſtituting Communities.

1. *This Inquiry neceſſary.* L. N. N. l. 7. c. 1.

ALTHO' there be hardly any Delight or Advantage, but what may be obtain'd from thoſe Duties, of which we have already diſcours'd; it remains, nevertheleſs, that we inquire into the Reaſons, why Men, not contenting themſelves with thoſe primitive and ſmall Societies, have founded ſuch as are more ample, call'd COMMUNITIES. For from theſe Grounds

Grounds and Foundations is to be deduced the Reaſon of thoſe Duties, which merely relate to the Civil State of Mankind.

II. *Difficulty herein.* L. N. N. l. 7. c. 1. § 2.

Here, therefore, it ſuffices not to ſay, That Man is *by Nature inclin'd to Civil Society*, ſo as he neither can nor will live without it. For ſince, indeed, it is evident, that Man is ſuch a Kind of Creature, as has a moſt tender Affection for himſelf and his own Good; it is manifeſt, that when he ſo earneſtly ſeeks after Civil Society, he reſpects ſome particular Advantage that will accrue to him thence. And altho' without Society with his Fellow-Creatures, Man would be the moſt miſerable of all Creatures; yet ſince the natural Deſires and Neceſſities of Mankind might be abundantly ſatisfied by thoſe primitive Kind of Societies, and by thoſe Duties to which we are obliged, either by Humanity or Contracts; it cannot immediately be concluded from this natural Society between Man and Man, that his Nature and Temper does directly incline him to the forming of Civil Communities.

III. *Twofold Inquiry.* L. N. N. l. 7. c. 1. § 4.

Which will more evidently appear, if we conſider, What Condition Mankind is placed in by the Conſtitution of *Civil Communities*: What that Condition is, which Men enter into when they make themſelves Members of a Civil State: What Qualities they are which properly intitle them to the Name of *Political Creatures*, and render them good Patriots or Subjects to the State. And, laſtly, What there is in their Frame and Conſtitution, which ſeems, as we may ſay, to indiſpoſe them for living in a *Civil Community*.

IV. *Natural State.*

WHOSOEVER becomes a *Subject*, immediately loses his Natural Liberty, and submits himself to some Authority, which is vested with the Power of Life and Death; and by the Commands of which, many Things must be done, which otherwise he would have been no ways willing to do, and many Things must be let alone, to which he had a strong Inclination: Besides, most of his Actions must terminate in the Publick Good, which in many Cases seems to clash with Private Men's Advantage. But Man by his *Natural* Inclinations is carried to this, To be subject to no one, to do all Things as he lists, and in every thing to consult his *single* Advantage.

V. *The Qualities of a good Member of the Community.*

BUT we call him a (*Political Animal* or) *True Patriot*, and Good Subject, who readily obeys the Commands of his Governours; who endeavours with his utmost to promote the Publick Good, and next to that, regards his Private Affairs; nay, more, who esteems nothing profitable to himself, unless the same be likewise profitable to the Community; lastly, who carries himself fairly towards his Fellow-Subjects. But there are few Men to be found, whose Tempers are naturally thus well inclin'd. The greater Part being restrain'd merely for fear of Punishment; and many continue all their Lifetime ill Subjects and unsociable Creatures.

VI. *How Men naturally disturb and hinder the Benefits of Society*

FARTHERMORE, there is no Creature whatsoever more fierce or untameable than Man, or which is prone to more Vices that are apt to disturb the Peace and Security of the Publick. For besides his inordinate Appetite to Eating, Drinking, and Venery, to which Brute Beasts are likewise subject, Mankind is inclin'd to many

many Vices, to which Brutes are altogether Strangers; as is the unsatiable Desire and Thirst after those Things which are altogether superfluous and unnecessary, and above all to that worst of Evils, AMBITION; also a too lasting Resentment and Memory of Injuries, and a Desire of Revenge increasing more and more by Length of Time; besides an infinite Diversity of Inclinations and Affections, and a certain Stiffness and Obstinacy in every one to indulge his own particular Humour and Fancy. Moreover, Man takes so great Delight in exercising his Cruelty over his Fellow Creatures, that the greatest Part of the Evils and Mischiefs, to which Mankind is obnoxious, is wholly owing to the merciless Rage and Violence of Men to each other.

L. N. N. l. 1. c. 3. § 4.

VII. *Reason of Change.* L. N. N. l. 7. c. 1. § 7.

THEREFORE the genuine and principal Reason which induced Masters of Families to quit their own natural Liberty, and to form themselves into Communities, was, That they might provide for themselves a Security and Defence against the Evils and Mischiefs that are incident to Men from one another. For as, next under God, one Man is most capable of being helpful to another; so nothing is able to create Man more Distress, and work him more Mischief, than Man himself; and those Persons have entertain'd a right Conception of the Malice of Men, and the Remedy thereof, who have admitted this as a common Maxim and Proverb; That *unless there were Courts of Judicature, one Man would devour another.* But after that, by the Constituting of Communities, Men were reduced into such an Order and Method, that they might be safe and secure from mutual Wrongs and Injuries among themselves,

it was by that means provided, that thereby they might the better enjoy those Advantages, which are to be reap'd and expected from one another; to wit, That they might from their Childhood be brought up and instructed in good Manners, and that they might invent and improve several Kinds of Arts and Sciences, whereby the Life of Man might be better provided and furnished with necessary Conveniences.

VIII. *Farther Penalties.* L. N. N. l. 7. c. 1. § 8.

And the Reason will be yet more cogent for the Constituting of Communities, if we consider, that other Means would not have been capable of curbing the Malice of Men. For although we are enjoyn'd by the Law of Nature not to do any Injury one to another; yet the Respect and Reverence to that Law is not of that Prevalence as to be a sufficient Security for Men to live altogether quietly and undisturbed in their Natural Liberty.

For although by Accident, there may be found some few Men of that moderate quiet Temper and Disposition, that they would do no Injury to others, tho' they might escape unpunish'd; and there may be likewise some others, that in some measure bridle their disorderly *Affections* thro' fear of some Mischief that may ensue from thence; yet, on the contrary, there are a great Number of such, as have no Regard at all to Law or Justice, whenever they have any Prospect of Advantage, or any Hopes, by their own subtle Tricks and Contrivances, of being too hard for, and deluding the injur'd Party. And as it behoves every one, that would take care of his own Safety, to endeavour to secure himself against this Sort of Persons; so no better Care

and

and Provision can be made, than by means of these Communities and Civil Societies. For altho' some particular Persons may mutually agree together to assist each other; yet unless there be some Way found out, whereby their Opinions and Judgments may be united together, and their Wills may be more firmly bound to the Performance of what they have agreed upon, it will be in vain for any one to expect and rely upon any certain Succour and Assistance from them.

IX. *Advantage of Penalties.* L. N. N. l. 7. c. 1. § 11.

LASTLY, Altho' the Law of Nature does sufficiently insinuate unto Men, that they who do any Violence or Injury to other Men, shall not escape unpunished; yet neither the Fear and Dread of a Divine Being, nor the Stings of Conscience are found to be of sufficient Efficacy to restrain the Malice and Violence of all Men. For very many Persons, thro' the Prejudice of Custom and Education, are, as it were, altogether deaf to the Force and Power of Reason. Whence it comes to pass, that they are only intent upon such Things as are present, taking very little Notice of those Things which are future; and that they are affected only with those Things which make a present Impression upon their Senses. But since the Divine Vengeance is wont to proceed on but slowly; from whence many ill Men have taken Occasion to refer their Evils and Misfortunes to other Causes; especially since they very often see wicked Men injoy a Plenty and Abundance of those Things wherein the vulgar Sort esteem their Happiness and Felicity to consist. Besides, the Checks of Conscience, which preceed any wicked Action, seem not to be of that

that Force and Efficacy, as that Puniſhment which follows the Commiſſion of the Fact, when, that which is done, cannot poſſibly be undone. And therefore the moſt preſent and effectual Remedy, for the quelling and ſuppreſſing the evil Deſires and Inclinations of Men, is to be provided by the Conſtituting of Civil Societies.

CHAP. VI.

Of the Internal Frame and Conſtitution of any State *or* Government.

I. *Conjunction neceſſary.* L. N. N. l. 7. c. 2.

THE next Enquiry we are to make, is upon what Bottom Civil Societies have been erected, and wherein their *Internal Conſtitution* does conſiſt. Where, in the firſt Place, this is manifeſt, That neither any Place, nor any Sort of Weapons, nor any Kind of brute Creatures can be capable of affording any ſufficient and ſafe Guard or Defence againſt the Injuries to which all Men are liable, by reaſon of the Pravity of Mankind: From ſuch Dangers, Men alone can afford an agreeable Remedy by joining their Forces together, by interweaving their Intereſts and Safety, and by forming a general Confederacy for their mutual Succour; that therefore this End might be obtain'd effectually, it was neceſſary that thoſe who ſought to bring it about, ſhould be firmly joined together and *aſſociated* into *Communities.*

NOR

NOR is it less evident, that the Consent and Agreement of *Two* or *Three* particular Persons cannot afford this Security against the Violence of other Men: Because it may easily happen, that such a Number may conspire the Ruin of those *few Persons*, as may be able to assure themselves of a certain Victory over them; and 'tis very likely they would with the greater Boldness go about such an Enterprise, because of their certain Hopes of Success and Impunity. To this end therefore it is necessary, that a very considerable *Number* of Men should unite together, that so the Overplus of a few Men to the Enemies, may not be of any great Moment to determine the Victory to their Side.

II. *Numbers Necessary.* L. N. N. l. 7. c. 2. § 2.

AMONG those many, which join together in order to this End, it is absolutely requisite that there be a *perfect Consent and Agreement concerning the Use of such Means as are most conducive to the End aforesaid.* For even a great Multitude of Men, if they do not *agree* among themselves, but are divided and separated in their Opinions, will be capable of effecting but very little; Or, although they may agree for a certain Time, by reason of some present Motion or Disposition of the Mind; yet as the Tempers and Inclinations of Men are very variable, they presently afterwards may divide into Parties. And although by Compact they engaged among themselves, that they would employ all their Force for the common Defence and Security; yet neither by this Means is there sufficient Provision made, that this Agreement of the Multitude shall be permanent and lasting: But something more than all this, is requisite, to wit, That they who have once entered

III. *Agreement to be perpetual.* L. N. N. l. 7. c. 2. § 3.

entered into a mutual League and Defence for the Sake of the Publick Good, should be debarr'd from separating themselves afterwards, when their private Advantage may seem any ways to clash with the Publick Good.

IV. *Faults herein how remedied.* L. N. N. l. 7. c. 2. § 5.

BUT there are two Faults, which are chiefly incident to Human Nature, and which are the Occasion that many who are at their own Liberty, and independent one upon the other, cannot long hold together for the promoting of any Publick Design. The One is the *Contrariety* of Inclinations and Judgments in determining what is most conducive to such an End; to which in many there is join'd a *Dulness* of Apprehending which, of several Means propos'd, is more advantagious than the rest; and a certain *Obstinacy* in defending whatsoever Opinion we have embraced. The other is a certain *Carelesness* and *Abhorrence* of doing that freely, which seems to be convenient and requisite, whensoever there is no absolute Necessity, that compels them, whether they will or no, to the Performance of their Duty. The First of these Defects may be prevented by a lasting Uniting of all their Wills and Affections together. And the Latter may be remedied by the constituting of such a Power as may be able to inflict a present and sensible Penalty upon such as shall decline their Contributing to the Publick Safety.

V. *Union of Wills.*

THE Wills and Affections of a great Number of Men cannot be united by any better means, than when every one is willing to submit his Will to the Will of one particular *Man*, or one Assembly of Men; so that afterwards whatsoever he or they shall will or determine concerning

concerning any Matters or Things neceſſary for the Publick Safety, ſhall be eſteemed as the Will of *All* and every particular Perſon.

VI. *And of Forces.*

Now ſuch a Kind of Power, as may be formidable to All, can by no better means be conſtituted among a great Number of Men, than when All and every one ſhall oblige themſelves, to make Uſe of their Strength after that Manner, as he ſhall command, to whom All Perſons muſt ſubmit and reſign the Ordering and Direction of their united Forces: And when there is an Union made of their Wills and Forces, then this Multitude of Men may be ſaid to be animated and incorporated into a firm and laſting Society.

VII. *Other Requiſites. Two Covenants. The Firſt.* L. N. N. l. 7. c. 2. § 6.

Moreover, that any Society may grow together after a regular Manner, there are required Two *Covenants*, and One Decree, or *Conſtitution.* For, firſt, Of all thoſe many, who are ſuppoſed to be in a Natural Liberty, when they are joined together for the forming and conſtituting any Civil Society, every Perſon enters into Covenant with each other, That they are willing to come into one and the ſame laſting Alliance and Fellowſhip, and to carry on the Methods of their Safety and Security by a common Conſultation and Management among themſelves: In a Word, That they are willing to be made Fellow Members of the ſame Society. To which Covenant, it is requiſite, that All and ſingular Perſons do conſent and agree, and he that does not give his Conſent, remains excluded from ſuch Society.

VIII. *Conſtitution.*

After this *Covenant*, it is neceſſary, that there ſhould be a *Conſtitution* agreed on by a publick Decree, ſetting forth, what *Form* of

Government

Government is to be pitched upon. For 'till this be determined, nothing with any Certainty can be transacted, which may conduce to the publick Safety.

IX. *The other Covenant.* L. N. N. l. 7. c. 2. § 8.

AFTER this Decree concerning the *Form* of *Government*, there is Occasion for another *Covenant*, when he or they are nominated and constituted upon whom the Government of this Rising Society is conferr'd; by which Covenant the Persons that are to govern, do oblige themselves to take Care of the Common Safety and the other Members do in like manner oblige themselves to yield Obedience to them; whereby also all Persons do submit their Will to the Will and Pleasure of him or them, and they do at the same Time convey and make over to him or them the Power of making Use of, and applying their united Strength, as shall seem most convenient for the Publick Security. And when this Covenant is duly and rightly executed, thence, at last, arises a *complete* and *regular Government*.

X. *A Community defined.* L. N. N. l. 7. c. 2. § 13.

A CIVIL Society and Government, thus constituted, is look'd upon as if it were but *One Person*, and is known and distinguished from every particular Man by one *Common Name*; and it has peculiar Rights and Privileges, which neither each One alone, nor Many, nor All together can claim to themselves, without him, who is the Supreme, or to whom the Administration of the Government is committed. Whence a Civil Society is defined to be, One Person morally incorporated, whose Will containing the Covenants of many united together, is looked upon and esteemed as the Will of All; so that he is in a Capacity of making Use

Uſe of the Strength and Power of every particular Perſon for the Common Peace and Security.

XI. *How ſubjected to One.* L. N. N. l. 7. c. 2. § 14.

Now the Will and Intention of any Conſtituted Government or Society exerts it ſelf, as the Principle of Publick Actions, either by one particular Perſon, or by one Council or Aſſembly, according as the Power of Managing Affairs is conferr'd on him, or on ſuch an Aſſembly. Where the Government of the State is in the Power of One Man, the ſaid Society is ſuppoſed to will, whatſoever ſhall be the Will and Pleaſure of that Man, allowing that he is in his perfect Senſes; and it being about thoſe Affairs which only relate to Government.

XII. *How to many.* L. N. N. l. 7. c. 2. § 15.

But when the Government of a State is conferr'd upon a *Council*, conſiſting of ſeveral Men, every one of them retaining his own Natural Free-Will, that regularly is eſteemed to be the Will and Pleaſure of the State, whereto the *Major Part* of the Perſons, of whom the Council is compoſed, does give their Aſſent; unleſs it be expreſly declared, how great a Part of the Council conſenting is required to repreſent the Will of the Whole. But where two differing Opinions are equally balanced on both ſides, there is nothing at all to be concluded upon, but the Affair ſtill remains in its former State. When there are ſeveral differing Opinions, that ſhall prevail which has more Voices than any of the other differing Opinions, provided ſo many concur therein, as otherwiſe might have repreſented the Will and Pleaſure of the Whole, according to the Publick Conſtitutions.

A State

XIII. *Various Forms of Government.* L. N. N. l. 7. c. 2. § 20.

A STATE or Government being thus constituted, the Party on whom the Supreme Power is conferr'd, either as it is a single Person, or a Council consisting of select Persons, or of All in General, is called a MONARCHY, an ARISTOCRACY, or a FREE STATE; the rest are looked upon as *Subjects* or *Citizens*, the Word being taken in the most comprehensive Sense: Although, in Strictness of Speech, some call only those *Citizens*, who first met and agreed together in the forming of the said Society, or else such who succeeded in their Place, to wit, *House-holders* or *Masters of Families.*

MOREOVER, Citizens are either *Originally* so; that is, such as are born in the Place, and upon that Account claim their Privileges: Or else *Adscititious*; that is, such as come from Foreign Parts.

OF the first Sort, are either those who at first were present and concerned in the forming the said Society, or their Descendants, whom we call *Indigenæ*, or Natives.

OF the other Sort are those who come from Foreign Parts in order to settle themselves there. As for those who come thither only to make a short Stay, although they are for that Time subject to the Laws of the Place; nevertheless, they are not looked upon as Citizens, but are called *Strangers* or Sojourners.

XIV. *Government from GOD.* L. N. N. l. 7. c. 3.

NOT that what we have delivered concerning the Original of Civil Societies, does any ways hinder, but that CIVIL GOVERNMENT may be truly said to be from GOD. For it being his Will, that the Practices of Men should be ordered according to the *Law of Nature*; and yet upon the Multiplication of Mankind,

kind, Human Life would have become ſo horrid and confuſed, that hardly any Room would have been left for the ſame to exert its Authority; and ſeeing the Exerciſe thereof would be much improved by the Inſtitution of Civil Societies; therefore (ſince He who commands the End, muſt be ſuppoſed to command likewiſe the Means neceſſary to the ſaid End) GOD alſo, by the Mediation of the Dictates of Reaſon, is to be underſtood antecedently to have willed, That Mankind, when they were multiplyed, ſhould erect and conſtitute Civil Societies, which are, as it were, animated with a Supreme Authority. The Degrees whereof He expreſsly approves in Divine Writ, ratifying their Divine Inſtitution by a peculiar Law, and declaring, That Himſelf takes them into his eſpecial Care and Protection.

CHAP. VII.

Of the ſeveral Parts of Government.

WHAT are the Conſtituent *Parts* of Supreme Power, and by what *Methods* it exerts its Force in Civil Societies, may eaſily be gather'd from the Nature and End of the ſaid Societies. I. L. N. N. l. 7. c. 4.

IN a Civil Society all Perſons are ſuppoſed to have ſubmitted their Will to the Will and Pleaſure of the Governours, in ſuch Affairs as concern the Safety of the Publick, being willing to do whatſoever they require. That this II. *Will of the Supreme to be made known.*

L. N. N. l. 7. c. 4. § 2. may be effected, it is necessary, that the Governors do *signify* to those who are to be governed, what their Will and Pleasure is concerning such Matters. And this they do, not only by their *Commands*, directed to particular Persons about particular Affairs; but also by certain general *Rules*, whence all Persons may, at all Times, have a clear and distinct Knowlege of what they are to do or omit. By which likewise it is commonly defined and determined what ought to be looked upon to be each Man's Right and Property, and what does properly belong to another; * what is to be esteemed Lawful, and what Unlawful in any Publick Society; what Commendable, or what Base; what every Man may do by his own Natural Liberty, or how every one may dispose and order his own particular Rights towards the Advancement of the common Peace and Tranquillity: In fine, what, and after what manner, every one by Right may lay Claim to from another. For it conduces very much to the Peace and Prosperity of any Civil Society, that all these Things should be clearly and plainly laid down and determined.

III. *Penalty.* L. N. N. l. 7. c. 4. § 3. MOREOVER, this is the Chief *End* of Civil Societies, That Men, by a mutual Agreement and Assistance of one another, might be secured against the Injuries and Affronts, which may, and very often do, befall us by the Violence of other Men. Now that this End may

* That is to say, In such Matters as are neither commanded nor forbidden by any Divine Law, whether it be Natural or Revealed. See *Law of Nature and Nations.* Book VIII. Chap. I. § 2, &c.

the

the better be obtained by thoſe Men, with whom we are link'd together in the ſame Society; it is not ſufficient, that they ſhould mutually agree among themſelves not to injure one another: Nor is it enough, that the bare Will and Pleaſure of the Supreme Magiſtrate ſhould be made known to them; but 'tis likewiſe requiſite, that there ſhould be a certain Fear and Dread of *Puniſhment*, and a Power and Ability of inflicting the ſame. Which *Puniſhment* or *Penalty*, that it may be ſufficient for this End, is to be ſo ordered, that there may plainly appear a greater Damage in violating the Laws, than in obſerving them; and that ſo the *Sharpneſs* and *Severity* of the Penalty, may outweigh the *Pleaſure* and *Advantage* gotten, or expected by doing the Injury: Becauſe it is impoſſible but that of two Evils Men ſhould chuſe the leaſt. For although there are many Men who are not reſtrained from doing Injuries by any Proſpect of Puniſhment hanging over their Heads; yet that is to be looked upon as a Caſe that rarely happens, and ſuch as, conſidering the preſent Condition and Frailty of Mankind, cannot be wholly avoided.

IV. *Controverſies.* L. N. N. l. 7. c. 4. § 4.

BECAUSE alſo it very often happens, that many Controverſies do ariſe about the *right Application* of the Laws to ſome particular Matters of Fact, and that many Things are to be nicely and carefully conſidered in order to determine whether ſuch a Fact may be ſaid to be againſt Law; therefore, in order to the Eſtabliſhment of Peace and Quietneſs amongſt the Subjects, it is the Part of the ſupreme Governour to take Cognizance of, and determine the *Controverſies* ariſing between Subject and Subject, and

and carefully to examine the Actions of particular Perſons, which are found to be contrary to Law, and to pronounce and execute ſuch Sentence as ſhall be agreeable to the ſame Law.

V. *Power of Peace and War.* L. N. N. l. 7. c. 4. § 5.

But that thoſe, who by mutual Agreement have conſtituted a Civil Society, may be ſafe againſt the Inſults of Strangers, the ſupreme Magiſtrate has Power to *aſſemble*, to *unite* into a Body, and to *arm*, or, inſtead of that, to liſt as many Mercenaries as may ſeem neceſſary, conſidering the uncertain Number and Strength of the Enemy, for the maintaining the publick Security; and it is likewiſe intirely left to the Diſcretion of the ſame Magiſtrate, to make Peace whenever he ſhall think convenient.

And ſince, both in Times of Peace and War, *Alliances* and *Leagues* with other Princes and States are of very great Uſe and Importance, that ſo the different Advantages of divers States and Governments may the better be communicated to each other, and the Enemy, by their joint Forces, may be repulſed with the greater Vigour, or be more eaſily brought to Terms. It is alſo abſolutely in the Power of the ſupreme Magiſtrate to enter into ſuch *Leagues* and *Treaties* as he ſhall think convenient to each Occaſion; and to oblige all his Subjects to the Obſervation of them, and at once to derive and convey down to the whole Civil Society, all the Benefits and Advantages thence ariſing.

VI. *Publick Officers.* L. N. N. l. 7. c. 4. § 6.

Seeing alſo the Affairs of any conſiderable State, as well in Time of War as Peace, cannot well be managed by one Perſon, without the Aſſiſtance of ſubordinate *Miniſters* and *Magiſtrates*,

giſtrates,

giſtrates, it is requiſite that able Men ſhould be appointed by the ſupreme Magiſtrate, to decide and determine in his Room the Controverſies ariſing between Subject and Subject; to inquire into the Councils of the Neighbouring Princes and States; to govern the Soldiery; to collect and diſtribute the publick Revenue: and, laſtly, in every Place to take ſpecial Care of the Common Good. And from each of theſe Perſons the ſupreme Magiſtrate may, and ought to exact the Performance of their Duty, and require an Account of their Behaviour in their reſpective Stations.

AND becauſe the Concerns of any Civil Society can, neither in Time of War nor Peace, be managed without *Expences*, the ſupreme Authority has Power to compel the Subjects to provide the ſame. Which is done ſeveral Ways; either when the Community appropriates a certain Portion of the Revenues of the Country they poſſeſs, for this Purpoſe; or when each Subject contributes ſomething out of his own Eſtate, and, if Occaſion requires, gives alſo his perſonal Help and Aſſiſtance; or when Cuſtoms are ſet upon Commodities imported and exported, (of which the firſt chiefly affects the Subjects, and the other Foreigners;) or, laſtly, when ſome moderate Tax is laid on thoſe Commodities which are ſpent. VII. *Taxes*, L. N. N. l. 7. c. 4. § 7.

TO conclude: Since the Actions of each Perſon are governed by his own particular Opinion, and that moſt People are apt to paſs ſuch a Judgment upon Things as they have been accuſtomed unto, and as they commonly ſee other People judge; ſo that very few are capable of diſcerning what is juſt and honeſt; upon this VIII. *Publick Doctrines.* L. N. N. l. 7. c. 4. § 8.

Account therefore it is expedient for any Civil Society, that such Kind of Doctrines should be publickly taught, as are agreeable to the right End and Design of such Societies, and that the Minds of the Inhabitants should be seasoned betimes with these Principles. * It does therefore belong to the supreme Magistrate to constitute and appoint fitting Persons to inform and instruct them publickly in such Doctrines.

IX. *All these Parts concentered.*

Now these several Parts of Government are naturally so connected, that to have a regular Form suitable to any civil Society, all these Parts thereof ought radically to center in One. For if any Part be wanting, the Government is defective, and uncapable of procuring its End. But if these several Parts be divided, so that some of them be radically here, and others there, hence of Necessity will follow an irregular and incoherent State of Things.

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* *Apolog.* § 6. *Eris Scandica.* P. 7, &c. *See also the* References *at* Lib. I. c. 4. § 9.

CHAP.

CHAP. VIII.

Of the several Forms of Government.

THE Supreme Power consider'd either as it resides in a Single *Man*, or in a Select *Council* or *Assembly* of Men, or of *All* in General, produces diverse Forms of Government. I. *Diverse Forms.* L. N. N. l. 7 c. 5.

Now the Forms of Government are either *Regular* or *Irregular*. Of the first Sort are those where the supreme Power is so united in one particular Subject, that the same being firm and intire, it carries on, by one *supreme Will*, the whole Business of Government. Where this is not found, the Form of Government must of Necessity be *Irregular*. II. *Regular and Irregular.*

THERE are Three *Regular* Forms of Government: The First is, When the supreme Authority is in *One Man*; and that is call'd a MONARCHY. The Second, When the same is lodged in a *select Number* of Men; and that is an ARISTOCRACY. The Third, When it is in a Council or Assembly of *Free-holders* and *Principal Citizens*; and that is a DEMOCRACY. In the First, he who bears the supreme Rule, is stil'd, A MONARCH; in the Second, the NOBLES; and in the Third, The PEOPLE. III. *Three Regular Forms.* L. N. N. l. 7. c. 5. § 2.

IN all these Forms, the Power is indeed the same. But in one Respect MONARCHY has a considerable Advantage above the rest; because in order to deliberate and determine, that is, actually to exercise the Government, there is IV. *Forms compar'd.* L. N. N. l. 7. c. 5. § 9.

no Necessity of appointing and fixing certain Times and Places; for he may deliberate and determine in any Place, and at any Time; so that a *Monarch* is always in a Readiness to perform the necessary Actions of Government. But that the *Nobles* and the *People*, who are not as one natural Person, may be able so to do, it is necessary that they meet at certain Times and Places, there to debate and resolve upon all publick Business. For the Will and Pleasure of a Council, or of the People, which results from the Majority of Votes concentring, can no otherwise be discover'd.

V. *A distemper'd State* L. N. N. l. 7. c. 5. § 10.

BUT, as it happens in other Matters, so in Governments also it falls out, That the same may be sometimes well, and at other times scurvily and foolishly managed. Whence it comes to pass, that some States are reputed *Sound*, and others *Distemper'd*. Yet we are not, on Account of these Imperfections, to multiply the several Species or Forms of Government, imagining that these several Defects make different Sorts of Governments; for these Vices or Defects, though different in themselves, do not, however, either change the Nature of the Authority it self, or the proper Subject in which it resides. Now these Defects or Vices in Government, do sometimes arise from the Persons who administer the Government; and sometimes they arise from the Badness of the *Constitution* it self. Whence the First are styl'd, Imperfections of the *Men*, and the Latter, Imperfections of the *State*.

VI. *Monarchy*

THE Imperfections of the *Men* in a *Monarchy* are, when he who possesses the Throne, is not well skilled in the Arts of Ruling, and

takes

takes none, or but a very ſlight Care for the publick Good, proſtituting the ſame to be torn in pieces and ſacrificed to the Ambition or Avarice of evil Miniſters; when the ſame Perſon becomes terrible by his Cruelty and Rage; when alſo he delights, without any real Neceſſity, to expoſe the Publick to Danger; when he ſquanders away, by his Luxury and profuſe Extravagance, thoſe Supplies which were given for the Support of the Publick; when he heaps up Treaſure unreaſonably extorted from his Subjects; when he is Inſolent, Haughty, or Unjuſt; or guilty of any other ſcandalous Vice. L. N. N. l. 7. c. 5. § 10.

VII. *Ariſtocracy.*

THE Imperfections of the Men in an ARISTOCRACY are, When by Bribery and baſe Tricks, Ill Men and Fools get into the Council, and Perſons much more deſerving than they, are excluded: When the Nobles are divided into ſeveral Factions: When they endeavour to make the common People their Slaves, and to convert the publick Stock to their private Advantage.

VIII. *Men in a Democracy.*

THE Imperfections of the Men in a DEMOCRACY are, when ſilly and troubleſome Perſons ſtickle for their Opinions with great Heat and Obſtinacy; when thoſe Excellencies, which are rather beneficial than hurtful to the Common-wealth, are depreſs'd and kept under; when, thro' Inconſtancy, Laws are raſhly eſtabliſh'd, and as raſhly annull'd, and what but juſt now was very pleaſing, is immediately, without any Reaſon, rejected; and when baſe Fellows are promoted in the Government.

IX. *Men in any Government.*

THE Imperfection of the Men, which may promiſcuouſly happen in any Form of *Government*, are, When thoſe who are intruſted with the

the publick Care, perform their Duty either amiſs, or ſlightly; and when the Subjects, who ought to make Obedience their Glory, grow reſtiff and ungovernable.

X. *Faults in a Conſtitution.* BUT the Imperfections of any *Conſtitution*, are, When the Laws thereof are not accommodated to the Temper and Genius of the People or Country; or, When the Subjects make uſe of them for fomenting inteſtine Diſturbances, or for giving unjuſt Provocations to their Neighbours; or, When the ſaid Laws render the Subjects incapable of diſcharging thoſe Duties that are neceſſary for the Preſervation of the Publick; for Inſtance, When thro' their Defect the People muſt of Neceſſity be diſſolv'd in Sloth, or rendred unfit for the Injoyment of Peace and Plenty; or when the fundamental Conſtitutions are order'd after ſuch a Manner, that the Affairs of the Publick cannot be diſpatched but too ſlowly, and with Difficulty.

XI. *How called.* L. N. N. l. 7. c. 5. § 11. TO theſe *diſtemper'd Conſtitutions*, Men have given certain Names; as a corrupt Monarchy, is call'd *Tyranny*; a corrupt Ariſtocracy, is ſtyl'd An *Oligarchy*, or a Rump-Government; and a corrupt *Popular State*, is call'd An *Anarchy*, or a Rabble-Government. Altho' it often happens, that many by theſe Nick-names do not ſo much expreſs the Diſtemper of ſuch a Government, as their own natural Averſion for the preſent Governours and Conſtitution.

FOR, oftentimes, he who is diſſatisfied with his *King*, or a *monarchical Government*, is wont to call, even a Good and Lawful Prince, a Tyrant and Uſurper, eſpecially if he be ſtrict in putting the Laws in Execution. So he who is vex'd

vex'd because he is left out of the *Senate*, not thinking himself Inferiour to any of the other Counsellors, out of Contempt and Envy, he calls them, A Pack of assuming Fellows, who tho' in no Respect they excell any of the Rest, yet domineer and lord it over their Equals, nay, over better Men than themselves.

LASTLY, Those Men who are of a haughty Temper, and who hate a *Popular Equality*, seeing that all People in a *Democracy*, have an equal Right to give their Suffrages in Publick Affairs, tho' in every Place the common People makes the greatest Number, they condemn that as an *Ochlocracy*, or Government by the Rabble, where there is no Preference given to Persons of Merit, as they, forsooth, esteem themselves to be.

XII. *An Irregular State.* L. N. N. l. 7. c. 5. § 12.

AN *Irregular Constitution* is, Where that perfect Union is wanting, in which the very Essence of a Government consists: And that not through any Fault or Male-administration of the Government, but because *this Form* has been receiv'd as good and legitimate by publick Law or Custom. But since there may be infinite Varieties of Errors in this Case, it is impossible to lay down distinct and certain Species of Irregular Governments. But the Nature thereof may be easily understood by one or two Examples; for Instance, If in a State the Nobles and the People are each vested with a supreme and unaccountable Power; * Or if in any Nation the

* *See* L. N. N. l. 7. c. 5. § 14, *&c. Dissert. Accademic. de Rep. irregulari.* p. 301. *& in Append. ibid.* p. 529. *Eris Scandica.* p. 176, 187.

Nobles

Nobles are grown ſo great, that they are no otherwiſe under the King, then as unequal Confederates.

XIII. *Union of ſeveral Communities.* L. N. N. l. 7. c. 5. § 17.

We call thoſe *Unions*, when ſeveral Conſtituted Societies by ſome ſpecial Tie are ſo conjoin'd, that their Force and Strength may be look'd upon in Effect as the united Force and Strength of one civil Society. Now theſe Unions may ariſe two ſeveral Ways; the one by a *Common Sovereign*, the Other by *League* or *Confederacy*.

XIV. *Union by a common Sovereign.*

Such a *Union* happens, by means of a common Sovereign, when diverſe ſeparate Kingdoms, either by Agreement, or by Marriage, or hereditary Succeſſion, or Victory, come to be ſubject to the ſame King; yet ſo that they do not cloſe into one Realm, but each are ſtill govern'd by the ſame common Sovereign, according to their own fundamental Laws.

XV. *Union by Confederacy.* L. N. N. l. 7. c. 5. § 18.

Another Sort of *Union* may happen, when ſeveral neighbouring States or Governments are ſo connected by a perpetual League and Confederacy, that they cannot exerciſe ſome Parts of the ſupreme Power, which chiefly concern their Defence and Security againſt Strangers, but by a general Conſent of them All: Each Society, nevertheleſs, as to other Matters, reſerving to it ſelf its own peculiar Liberty and independency.

CHAP. IX.

The Qualifications *of* Civil Government.

IT is always one Prerogative of the Government by which any Community is directed, in every Form of Commonwealth whatsoever, *to be invested with the supreme Authority:* * Whereby it has the Regulating of all Things according to its own Judgment and Discretion, and acts without Dependence upon any other Person † as Superiour, that can pretend to annul or countermand its Orders.

I. *Supreme Authority* L. N. N. l. 7. c. 6.

FOR the same Reason, a Government so constituted remains *unaccountable to all the World;* there being no Authority *above* it to punish it, or to examine whether its Proceedings are right or no.

II. *Unaccountable.* L. N. N. l. 7. c. 6. § 2.

AND a *third Qualification* of like Nature with the former, is, That inasmuch as all civil Laws, of human Authority, derive both their

III. *Above the Laws.*

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* *Grotius de Jure Belli & Pacis,* lib. 1. cap. 3. § 6, &c.

† This Restriction must be carefully observ'd; for tho' in a *limited Monarchy,* the Sovereign can't enact a Law without the Advice and Consent of his People represented in Parliament, yet notwithstanding, this Authority of the People is not equal, much less superiour, to that of the *Prince:* The Author's Account of the Nature of supreme Authority is imperfect; it ought to have comprehended distinctly what is equally agreeable to a *limited* and to an *Absolute Sovereignty.*

Beginning

L. N. N. l. 7. c. 6. § 3. Beginning and their Continuance from the Favour of the Government; it is impossible they should directly *oblige the very Power that makes them*; because the same Power would in Consequence be superiour to it self. Yet it is a happy Prospect, and a singular Advantage to the Laws, when a Prince conforms himself, of his own Pleasure, as Occasion serves, to practise the same Things that he commands his Subjects.

IV. *Obedience due to it.* L. N. N. l. 7. c. 8.

THERE is also a peculiar *Veneration* to be paid to the supreme Government under which we live; not only in obeying it in its just Commands, wherein it is a Crime to disobey, but in *induring its Severities* with the like Patience as the Rigour of some Parents is submitted to by dutiful Children. Wherefore, when a Prince proceeds to offer the most heinous Injuries imaginable to his People, let them rather undergo it, or every one seek his Safety by Flight, than draw their Swords upon the Father of their Country.

V. *An absolute Monarchy.* L. N. N. l. 7. c. 6. § 7.

WE find, in *Monarchies* and *Aristocracies* especially, that the Government is sometime *Absolute* and sometime *Limited.* An *Absolute* Monarch is one, who having no prescrib'd Form of Laws and Statutes perpetually to go by, in the Method of his Administration, proceeds intirely according to his own Will and Pleasure, as the Condition of Affairs and the publick Good in *his Judgment* seem to require.

VI. *A limited Monarchy* L. N. N. l. 7. c. 6. § 9.

BUT because a single Person may be subject to be *mistaken* in his Judgment, as well as to be seduced into evil Courses in the Injoyment of so vast a Liberty; it is thought convenient by some States, * to circumscribe the Exercise of

* *Grotius de Jure Belli & Pacis*, l. 1. c. 3. § 14. &c.

this

this Power within the *Limits of certain Laws*, which are propos'd to the Prince at his Succession to be the future Rule of his Government. And particularly when any extraordinary Concern arises, involving in it the Interest of the whole Kingdom, for which there can be no Provision extant in the Constitution foregoing; They then oblige him to ingage in nothing without the previous Advice and Consent of the People, or their *Representatives in Parliament*; the better to prevent the Danger of his swerving from the Interest of the Kingdom.

VII. *Right and Manner of holding.* L. N. N. l. 7. c. 6. § 14.

We see likewise a Difference in the *Right and Manner of holding* some Kingdoms, from what it is in others. For those Princes especially who have acquired Dominions by Conquest, and made a People their own by Force of Arms, can *divide*, *alienate*, and *transfer* their Regalities at Pleasure in the manner of a Patrimonial Estate. Others that are advanced by the Voice of the People, tho' they live in full Possession of the Government during their Reigns, yet have no Pretensions to such a Power. But as they attain'd to the Succession, so they leave it to be determin'd, either by the ancient Custom, or the fundamental Laws of the Kingdom: * For which Reason they are compared by some to Usufructuaries, or Life-Renters.

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* *Grotius de Jure Belli & Pacis*, l. 1. c. 3. § 11. & l. 2. c. 7. § 12.

CHAP

CHAP. X.

How Government, *especially* Monarchical, *is acquired.*

I. *Consent of the Subject free or forced.* L. N. N. l. 7. c. 7.

ALTHOUGH the *Consent of the Subject* is a Thing to be required in Constituting of every lawful Government, yet it is always obtain'd the same way. For as it is sometimes seen, that a Prince ascends the Throne with the *voluntary Acclamations of the People*; so sometimes he makes himself a King by his *Army*, and brings a People to consent by *military Force.*

II. *Of Conquest.* L. N. N. l. 7. c. 7. § 3.

WHICH latter Method of acquiring a Government is called *Conquest*; it happening, as often as victorious Prince, having Fortune on his Side and a just Cause, reduces a People by his Arms to such Extremities, as to compel them to receive him for their Sovereign. And the Reason of this Title is derived, not only from the Conqueror's Clemency in saving the Lives of all those whom, in Strictness of War, he was at Liberty to destroy, and instead thereof laying only a lesser Inconvenience upon them; but likewise from hence, That, when a Prince will choose to go to War with one that he has injured, rather than he will condescend to satisfie him in a just and equal Manner; * He is to be presum'd to cast himself upon the Fortune of War, with this Intention, that he does beforehand

* *Grotius de Jure Belli & Pacis*, lib. 3. cap. 8.

tacitly

tacitly consent to accept of any Conditions whatsoever shall befall him in the Event.

III. *Election.* L. N. N. l. 7. c. 7. §. 6.

As for the *voluntary Consent of the People*, a Government is acquired by it, when in an *Election* the People, either in order to their Settlement, or at any Time after, do nominate such a One, to bear that Office, as they believe is capable of it. Who, upon Presentation of their Pleasure to him, accepting it, and also receiving their Promises of Allegiance, thereby actually enters upon the Possession of the Government.

IV. *An Interregnum.* L. N. N. l. 7. c. 7. § 7.

But betwixt this Election of a new Prince and the Death of the former, there uses in Monarchies that are already fix'd and settled, to intervene an *Interregnum*; which signifies an imperfect Kind of State, where the People keep together merely by Virtue of their *Original Compact*: Only that this is much strengthned by the common Name and Love of their Country, and the Settlement of most of their Fortunes there; whereby all good Men are obliged to preserve the Peace with one another, and study to restore their fallen Government again as soon as they can. Yet to prevent the Mischiefs which are apt to arise in an *Interregnum*, it is very convenient the Law should provide *Administrators*, to manage the publick Affairs during the Vacancy of the Crown.

V. *Succession.* L. N. N. l. 7. c. 7. § 11.

Now though, as is said, in some Monarchies, as every King dies, they proceed again to a *New Election*: yet in others, the Crown is conferr'd upon Conditions to descend to certain Persons *successively*, (without any intervening Election) for all Time to come. The Right to which Succession may either be determined by

the *Order of the Prince*, or the *Order of the People.*

VI. *Devisable when.* L. N. N. l. 7. c. 6. § 16.

WHEN Princes hold their Crowns in the Manner *of a Patrimony,* they have the Liberty of *disposing of the Succession as themselves please.* And their declared Order therein, especially if their Kingdoms are of their own Founding or Acquiring, shall carry the same Force with the last Testament of any private Man. They may divide, if they please, their Kingdom amongst all their Children, not so much as excepting the Daughters. * They may, if they think fit, make an Adoptive, or their Natural Son, their Heir, or one that is not in the least a-kin to them.

VII. *Succession upon an Intestate.*

AND when such an Absolute Monarch as this dies, without leaving Order for the Succession, it is to be presumed he did not thereby intend the Kingdom should expire with himself; but *first,* That it should devolve to his Children (before all others) because of the natural Affection of Parents to them: Then, *That* the same Monarchical Government should continue, which he recommended by his own Example. *That* the Kingdom be kept undivided, as one Realm; because any Division thereof must give Occasion to great Troubles, both among the Subjects and the Royal Family. *That* the Elder reign before the Younger, and the Male before the Female in the same Line; † And, lastly, *That* in Default of Issue, the Crown shall devolve upon the next in Blood.

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* *Grotius de Jure Belli & Pacis,* Lib. 2. Cap. 7. § 12, *&c.*

† *Grotius de Jure Belli & Pacis.* l. 2. c. 7. § 12, *&c.*

BUT

VIII. *Succession in the People.* L. N. N. l. 7. c. 7. § 11.

BUT in those Monarchies, whose Constitution, from the very Beginning, was founded upon the voluntary Choice of the People, there the *Order of Succession must have an Original Dependance upon the Will of the same People.* For if, together with the Crown, they did confer upon the Prince the Right of appointing his Successor; whosoever shall be nominated to the Succession by him, will have all the Right to injoy it. If they did not confer it upon the Prince, it is to be understood as reserved to themselves: Who, if they pleased, might make the Crown Hereditary to their Prince's Family; either prescribing the Order of Succession to be like other ordinary *Inheritances*, so far as can consist with the Publick Good; or set the same under any peculiar necessary *Limitations*.

IX. *Of Hereditary Kingdoms.* L. N. N. l. 7. c. 7. § 12.

WHEN a People have barely conferr'd upon their King an Hereditary Right, without any thing farther express'd; tho' 'tis true, it may seem to be intended, that the Crown shall pass to the Heirs in the same common Order of Descent as private Inheritances do; yet the Publick Good requires, That the Sense of such a Publick Act shall be taken under some *Restrictions*, notwithstanding their not being particularly express'd. As,

1. IT is supposed, That the Kingdom shall continue inseparable, as one Realm.

2. THAT the Succession shall go to the Descendants of the first Prince of the Line. Excluding,

3. ILLEGITIMATE and Adopted Children, with all that are not born according to the Laws of the Realm.

4. That the Heirs Male be preferr'd before the Female in the same Line, tho' their Inferiors in Age: And,

5. That each Prince esteem his Succession, not as the Gift of his Predecessor, but as the Bounty of the People.

X. *A Lineal Succession.* L. N. N. l. 7. c. 7. § 13.

Now, because after a long Descent of Princes, there may easily arise Controversies almost inextricable, about the Person of the Royal Family, who approaches nearest in Kindred to the Prince deceased; therefore, for Prevention of such, in many Kingdoms they have introduced a *Lineal Succession*, of this Nature; *That* as every one descends from the Father of the Stem-Royal, they compose, as it were, a perpendicular Line; from whence they succeed to the Crown, according to the Priority of that Line to others: And tho', perhaps, the nearest of Kin to the Prince last deceased, may stand in a *New* Line, different from that of *His*; Yet there is no passing out of the Old Line thither, 'till Death has exhausted the same.

XI. *By the Father's side, or the Mother's.*

The Series of Succession most regardable, are those Two, deduced from the several *Families of the Father and the Mother*; the Relation whereof is distinguish'd in the Civil Law by the Names of *Cognation* and *Agnation*. The First, called also the *Castilian Law*, does not exclude the Women, but only postpones them to Males in the same Line; for it recurs to them in the Case of the other's *Default*. But by the Second, which is sometimes styl'd the *French* or *Salick Law*, both the Women and all their Issue, even Males, are excluded for ever.

When

WHEN, in a Patrimonial Kingdom, there arises a Dispute concerning the Succession, the most adviseable Way to determine it, is, To put it to the Arbitration of some of the Royal Family; And where the Succession originally depended upon the Consent of the People, there their Declaration upon the Matter, will take away the Doubt. XII. *Differences about Succession how to be determined.*

CHAP. XI.

The Duty *of* Supreme Governours.

IF we consider what is the End and Nature of Communities, and what the Parts of Government, it will be easie from thence to pass a Judgment upon the Rules and Precepts, in the Observance of which, consists the Office of a Prince. I. L. N. N. l. 7. c. 9.

BEFORE all Things, it is requisite, That he apply himself, with the utmost Diligence, to the Study of *whatever may conduce to give him a perfect Comprehension of the Affairs belonging to a Person in his Station*: because no Man can manage a Place to his Honour, which he does not *rightly* understand. He is therefore to be sequestred from those remote and foreign Studies, which make nothing to *this Purpose*: He must abridge himself in the Use of Pleasures and vain Pastimes, that would divert his Attention from *this Mark* and End. II. *Their proper Studies and Conversation.* L. N. N. l. 7. c. 9. § 2.

And for his more *familiar Friends*, instead of Parasites and Triflers, or such as are accomplished in nothing but Vanities, (whose Company ought utterly to be rejected ;) let him make Choice of Men of Probity and Sense, experienced in Business, and skilful in the Ways of the World ; being assured, that 'till he does thoroughly understand, as well the Condition of his own State, as the Disposition of the People under him, he will never be able to apply the general Maxims of *State Prudence*, to the Cases that will occur in Government, in such a Manner as they ought. More especially, let him study to be excellent in Virtues, that are of the greatest Use and Lustre in the Exercise of his vast Charge ; and so compose the Manners, and all the Actions of his Life, that they may be answerable to the Height of his Glory.

III. *The Publick Good, the Supreme Law.* L. N. N. l. 7. c. 9. § 3.

The most General Rule to be observed by Governours, is this ; *The Good of the Publick is the Supreme Law of all.* Because, in conferring the Government upon them, what is there else intended, but to secure the common End for which Societies were constituted in the Beginning ? From whence they ought to conclude, That whatsoever is not expedient for the *Publick* to be done, ought not to be accounted expedient for *themselves*.

IV. *Laws, Discipline, and Religion.* L. N. N. l. 7. c. 9. § 5.

And it being necessary, in order to preserve a People at Peace with one another, that the Wills and Affections of them should be disposed and regulated, according as it is most proper for the publick Good ; there ought to be some *suitable Laws* for the Purpose prescribed by Princes, and also a *publick Discipline* established

blished with so much Strictness, that so, Custom, as well as Fear of Punishment, may be able to keep Men close to the Practice of their several Duties. * To which End it is convenient to take Care, that the Christian Religion, after the most pure and most uncorrupt Way, be profess'd by the Subjects of every Realm or Community; and that no Tenets be publickly taught in the Schools, that are contrariant to the Designs of Government.

V. *The Laws plain and few.*

It will conduce to the Advancement of the same End, that in the Affairs which are wont to be most frequently negociated between Subject and Subject, the Laws which are prescribed be *clear* and *plain*; and *no more in Number* than will promote the Good of the Republick and its Members. For, considering that Men use to deliberate upon the Things they *ought*, or ought *not* to do, more by the Strength of their *Natural Reason*, than their Understanding in the *Laws*; whenever the Laws do so *abound* in Number, as not easily to be retained in Memory; or are so *particular* in their Matter, as to prohibit Things which are not prohibited by the Light of Reason; it must certainly come to pass, That innocent Persons, who have not had the least ill Intention to transgress the Laws, will be many times unwittingly hamper'd by them, as by Snares, to their unreasonable Prejudice, against the very End of Societies and Government.

* See *Dissertationes Academicæ de Concord. Polit. cum Religione Christiana*, Lib. II. Pag. 449. And also *De Habitu Religionis Christianæ ad Vitam Civilem*: Especially *Chapters* 7, 47, 49.

VI. *And duly executed.* L. N. N. l. 7. c. 9. § 6.

YET it is in vain for Princes to make Laws, and at the same time suffer the Violation of them to pass with Impunity. They must therefore *cause them to be put in Execution,* both for every *honest Person* to injoy his Rights without Vexation, Evasions, or Delays; and also for every *Malefactor* to receive the Punishment due to the Quality of his Crime, according to the Intention and Malice in the committing it. They are not to extend their Pardons to any without sufficient Reason. For it is an unjust Practice, which tends greatly to irritate the Minds of People against the Government, not to use Equality (all Circumstances considered) towards Persons that are Equal in their Deservings.

VII. *Penalties.* L. N. N. l. 7. c. 9. § 7.

AND as nothing ought to be Enacted under a *Penalty,* without the Consideration of some *Profit* to the Common-wealth, so in the *fixing of Penalties proportionably to that End,* it is fitting to observe a Moderation; with Care, that the Damage thence arising to the Subject on the one Hand, exceed not the Advantage that redounds to the Common-wealth on the other. In fine, to render Penalties effectual in obtaining the End intended by them, it is clear they should still be magnified to such a Degree, as, by their Severity, to out-weigh the contrary Gain and Pleasure, that is possible to proceed from chusing the Crime.

VIII. *Injuries.* L. N. N. l. 7. c. 9. § 8.

MOREOVER, inasmuch as the Design of People, in incorporating together in a Common-wealth, is their Security from Harms and Violence; it is the Duty of the supreme Magistrate to *prohibit any Injury of one Subject to another* so much the more severely, because, by their constant

constant Cohabitation in the same Place, they have the fairer Opportunities to do them or to resent them: Remembring, that no Distinctions of Quality or Honour derive the least Pretence to the Greater to insult over the Less at their Pleasure. Neither has any Subject whatsoever the Liberty to seek his Satisfaction for the Injuries, he presumes are done him, in the Way of a private Revenge. For the Design of Government is destroyed by such a Proceeding as this.

IX. *Ministers of State and Judges.* L. N. N. l. 7. c. 9. § 9.

AND although there is no one Prince, how ingenious soever in Business, that is able in his own Person to manage all the Affairs of a Nation of any considerable Extent, but he must have *Ministers to participate with him in his Cares and Counsels*; Yet as these Ministers borrow their Authority, in every Thing they do, from Him; so the Praise or Dispraise of their Actions returns finally upon Him also. For which Reason, and because according to the Quality of Ministers, Business is done either well or ill, there lies an Obligation upon a Prince to advance *honest* and *fit* Persons to Offices of Trust in the Government, and upon Occasion to examine into the Proceedings of the same; and as he finds them deserving, to reward or punish them accordingly, for an Example to others to understand, that there is no less *Fidelity* and *Diligence* to be used in managing the *publick* Business, than one would practise in any *private* Affair that relates to himself. So when wicked People are incouraged to put their Inclinations in Practice, upon the Hopes of escaping very easily unpunish'd under *Judges that are subject to Corruption*; it is a Prince's Duty to animadvert severely upon such Judges,

as

as Favourers of Vice, against the *Safety* of the Subject, and *Quiet* of the Nation. And though the Dispatching of the ordinary Affairs may be committed to the Ministers Care; yet a Prince is never to refuse to lend his Ear with Patience, when his Subjects present him with their Complaints and Addresses.

X. *Of Taxes and Duties.* L. N. N. l. 7. c. 9. § 10.

For Taxes and the like Duties, to which Subjects are upon no other Account obliged, than as they are *necessary* to support the publick Charge in Peace and War; it deserves to be the Care of Princes not to extort more, than either the *Necessities* or *signal Advantages* of the Nation require; and so to alleviate and soften them in the Ways and Means of laying them upon the Subject, that every one may find their Weight as little offensive as it can possibly be; being charged upon Particulars in a *fair* and *equitable Proportion*, without favouring of one Person, to deceive or oppress another. And let not the Money that is so rais'd be consumed by Princes in Luxury and Vanities, or thrown away in Gifts and needless Ostentation; but laid out upon the Occasions of the Nation; always foreseeing, that their *Expences* be made to answer to their *Revenue*; and in case of any Failure in the latter, so to order Things, that by prudent Frugality and retrenching unnecessary Expences, the Publick may not suffer Damage for want of a sufficient Treasure.

XI. *Interest of the Subject to be advanced by Princes.* L. N. N. l. 7. c. 9. § 11.

It is true, Princes have no Obligation upon them to find Maintenance for their Subjects, otherwise than Charity directs them to a particular Care of those, for whom it is impossible to subsist of themselves by Reason of some Calamity undeserved. Yet because the Money, that

that is necessary for the Conservation of the Publick, must be raised out of the Subjects Estates, in whose Wealth and Happiness the Strength of a Nation does consist; it therefore concerns Princes to use their best Endeavours, *that the Fortunes of their Subjects improve and flourish*; as particularly, by giving Orders, how the Products of the Earth and Water may be received in the most plentiful Measure; and that Men employ their Industry in improving such Matters as are of their own Growth, and never hire foreign Hands for those Works which they can conveniently perform themselves. That all Mechanick Arts and Merchandise, and in Maritime Places, Navigation be incouraged, as of great Consequence to the Commonwealth. That Idleness be banished from amongst them, and Frugality be restored by *Sumptuary Laws*, contrived on Purpose to avoid superfluous Expences; especially those, which occasion the transporting of Riches out of the Kingdom. Whereof, if the Prince is pleased to set an Example in his own Person, it is likely to prove of greater Force than all the *Laws* beside.

XII. *Factions and Parties.* L. N. N. l. 7. c 9. § 12.

FARTHER, Since the *internal* Health and Strength of a Nation proceeds in a particular Manner from the *Unity that is among the People*; and according as this happens to be more and more perfect, the Power of the Government diffuses it self through the whole Body with so much the greater Efficacy: It is for this Reason incumbent upon Princes, to hinder, as well the Growth of *publick Factions*, as of *private Associations* of particular Persons by Agreements amongst themselves. As also to see, that neither all, nor any of the Subjects, place a greater

greater Dependance, or rely more for Defence and Succour on any other Person, within or without the Realm, under any Pretence whatsoever, whether Sacred or Civil, than on their lawful Sovereign, in whom alone, before others, all their Expectations ought to be reposed.

XIII. *Of War and Peace with foreign Nations.* L. N. N. l. 7. c. 9. § 13.

LASTLY, Since the Peace of Nations in reference to one another depends upon no very great Certainties; it ought to be the Endeavour of Princes to incourage *Valour and Military Studies* in their Subjects; having all things, as Fortifications, Arms, Men, and Money (which is the Sinews of Civil Affairs) ready prepared, in case of any Attack from abroad, to *repel* it: Though not voluntarily to *begin* one upon another Nation, even after sufficient Cause of War given, unless when invited by a very safe Opportunity, and that the Publick be in a good Condition conveniently to go thro' with the Undertaking. For the same Reason it is proper to observe and search into the Counsels and Proceedings of Neighbours with all Exactness, and to enter with them into *Leagues and Alliances* as prudently, as so great a Concern requires.

CHAP. XII.

Of the Special Laws *of a* Community, *relating to the* Civil Government.

IT Now remains, That we take a view of the respective *Parts* of Supreme Government, together with such *Circumstances* thereunto belonging, as we find are worthy to be observ'd. In the first Place, there are the *Civil Laws*, meaning the Acts and Constitutions of the highest *Civil* Authority for the Time being, ordained to direct the Subject in the Course of his Life, as to what Things he ought to do, and what to omit. I. *What they are.* L. N. N. l. 8. c. 1. § 1.

THESE are called *Civil*, upon two Accounts especially: That is, Either in Regard to their *Authority*, or their *Original*. In the first Sense, all manner of Laws whatsoever, by the Force whereof Causes may be tried and decided in a Court of Civil Judicature, let their Original be what it will, may pass under that Denomination. In the other, we call only those Laws *Civil*, which derive their Original from the Will of the Supreme Civil Government, the Subjects whereof are all such Matters, concerning which neither the Laws of God or Nature have determined; yet a due Regulation and Settlement of them is found to be very conducive and advantagious to particular Commonwealths. II. *Why so called.*

III. *The Law of Nature to be inforced by them.* L N N. l. 8. c. 1. § 2.

As nothing therefore ought to be made the Subject of a Civil Law, but what relates to the *Good* of the Commonwealth that does ordain it; so it seeming in the highest Degree expedient towards the Regularity and Ease of living in a Community, That in particular *the Law of Nature should be diligently observed by all People*, it lies upon Supreme Governours to authenticate the said Law with the Force and Efficacy of a *Civil* Law. For since indeed the Wickedness of a great Part of Mankind is arrived to a Degree, which neither the apparent Excellency of the Law of Nature, nor the Fear of God Himself, is sufficient to restrain; the most effectual Method remaining, to preserve the Happiness of living in a Community, is, by the Authority of the Government to inforce the *Natural* by the *Civil Laws*, and supply the Disability of the one with the Power of the other.

IV. *The Penal Sanction.*

Now the *Force and Power, which is in Civil Laws*, consists in this, That to the Mandatory Part of the Statute, concerning Things to be done or omitted, there is annexed a *Penal Sanction*, assigning the Punishment that is to be inflicted upon a Man by a Court of Justice for omitting what he ought to do, or doing what he ought to omit. Of which Kind of Sanctions, the Laws of Nature being of themselves destitute, the breaking of them does not fall under the Punishment of any Court in this World; but yet it is reserved for the Judgment of the Tribunal of GOD.

V. *Of Actions*

More particularly, it is inconsistent with the Nature of living in a Community, for any one by his *own* Force to exact and extort what himself accounts to be his Due. So that here the

the *Civil* Laws come in, to the Aſſiſtance of the *Natural.* For they allow the Creditor the Benefit of an *Action*, whereby the Debt that is owing to him by Virtue of a Law of Nature, with the Help of the Magiſtrate, may be demanded and recover'd in a Court of Juſtice, according to the Courſe of the Laws of the Nation: Whereas without ſuch Inforcement of the ſaid Laws, you can force nothing from a Debtor againſt his Will; but muſt intirely depend upon his Conſcience and Honour. The Civil Laws admit of *Actions* chiefly in the Caſe of thoſe Obligations that are contracted betwixt Parties by an expreſs Bond or Covenant. For as to other Affairs, where the Obligation ariſes from ſome *indefinite* Duty of the Law of Nature, the Civil Laws make them not ſubject to an *Action* at all; on purpoſe to give occaſion to good Men to exerciſe their Virtue, to their more extraordinary Praiſe, when it is evident, they do that which is juſt and honeſt without Compulſion. Beſide that, frequently, the Point in Queſtion may not be of Conſequence enough to trouble a Court about it.

VI. *The Proſecution of them.*

And whereas the Law of Nature commands many Things at large, in an indefinite Manner, and leaves the Application of them to every one in his own Breaſt; the Civil Laws being careful of the Honour and Tranquillity of the Community, preſcribe a *certain Time, Manner, Place, Perſons, and other Circumſtances,* for the due Proſecution of thoſe Actions, with the Propoſal of a Reward upon Occaſion, to incourage People to enter upon them. And when any Thing is obſcure in the Law of Nature, the Civil Laws *explain* it. Which Explication the

the Subjects are obliged to receive, and follow, although their own private Opinions do otherwise lead them to a contrary Sense.

VII. Form. So that there being thus a Number of Actions, left by the Law of Nature to be consider'd according to the Will and Judgment of each Person, which nevertheless in a Common-wealth ought to be regularly stated for the greater Decency and Quiet of the same; it uses to be the Care of the Civil Laws to reduce all those Actions, with their respective Concerns, to a *proper Form*; as we see it is in Wills, Contracts, and divers other Cases: from whence it comes, that they *limit* us (as they do) in the Exercise of several Rights, to the Use whereof the Law of Nature left us much at *Liberty*.

VIII. *The Obedience due to the Civil Laws.* For so far as the Civil Laws do not openly contradict the Law of GOD, the Subjects stand *obliged to obey them*, not merely out of Fear of Punishment, but by an internal Obligation confirm'd by the Precepts of the Law of Nature it self. This being one of them, amongst others, That *Subjects ought to obey their lawful Sovereigns.*

IX. *And to the particular Commands of the Sovereign,* L. N. N. l. 8. c. 1. § 6. Nay, it is their Duty to obey even the *Personal Commands* of their Sovereigns, no less than they do the Common Laws of the Kingdom. Only here they must observe, whether the Thing commanded is to be done by them *as in their own Names*, in the Quality of an Action belonging *properly to Subjects to do*; or whether it be barely to undertake the *Execution* of an Affair for the Sovereign, in Consequence of that Authority which he has to command it.

In

* This Distinction will by no means hold good; for if

In the later Case, the Necessity that is imposed upon the Subject excuses him from Sin, 'tho' to command the Fact it self is a Sin in the Sovereign. But in the Other, for a Subject, as in his *own* Name, to do a Thing which is repugnant to the Laws of God and Nature, can never be Lawful. And this is the Reason, why, if a Subject takes up Arms in an unjust War, at the Command of his Sovereign, he sins not: Yet if he condemns the Innocent, or accuses and witnesses against them falsely upon the like Command, he sins. For as he serves in War, he serves in the Name of the Publick; but acting as a Judge, Witness, or Accuser, he does it in his Own.

CHAP. XIII.

Of the Power of Life *and* Death.

THE Civil Government, that is supreme in every State, has a Right over the Lives of its Subjects, either *indirectly*, when it exposes their Lives in Defence of the Publick; or *directly*, in the Punishment of Crimes. I. *Twofold.*

FOR when the Force of Foreigners in an Invasion (which often happens) is to be repell'd by Force; or, That we cannot without the II. *Indirectly.*

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the Thing commanded by the Sovereign, be manifestly Criminal, Unjust, and Unrighteous, let it be commanded in what Way and Method it will, and inforced with the greatest Threats possible, it ought not to be comply'd with. See *L. N, N.* Lib. 1. Cap. 1. § 24.

Use of Violence obtain our Rights of them; it is lawful for the Government, by its supreme L. N. N. l. 8. c. Authority, to compel the Subjects to enter into its Service; not thereby purposely intending their Death, only their Lives are exposed to some Danger of it. On which Occasions, that they may be able to behave themselves with Skill and Bravery, it is fit they should be exercised and prepar'd for the Purpose. Now the Fear of Danger ought not to prevail with any Subject, to render himself uncapable of undergoing the Duties of a Soldier; much less ought it to tempt a Man that is actually in Arms, to desert the Station appointed him; who ought to fight it out to the last Drop of his Blood, unless he knows it to be the Will of his Commander, that he should rather preserve his Life than his Post; or if he be certain that the maintaining of such Post is not of so great Importance, as the Preservation of the Lives ingaged therein.

III. *Directly.* L. N. N. l. 8. c. 3. § 1.

The Government claims a Power to take away the Lives of Subjects *directly*, upon the Occasion of any heinous Crimes committed by them; * whereon it passes Judgment of Death by way of *Punishment*: As likewise the Goods and Chattels of Criminals are subject to the Censure of the Law. So that here some general Things concerning the Nature of Punishments, come to be discours'd.

IV. *Of Punishments.* L. N. N. l. 8. c. 3. § 4.

Punishment is an Evil that is *suffered*, in Retaliation for another that is *done*. Or, A certain grievous Pain or Pressure, impos'd upon a Person by Authority, in the Manner of a Force, with Regard to an Offence that has

* *Grotius de Jure Belli & Pacis*, l. 2. c. 20, & 21.

been

been committed by him. For although the *doing* of some Things may oftentimes be commanded in the Place of a Punishment, yet it is upon this Consideration, that the Things to be done are troublesome and laborious to the Doer, who will therefore find his Sufferings in the Performance of such Action. A Punishment also signifies its being inflicted against the Wills of People: For it would not otherwise obtain its End; which is, to deter them from Crimes by the Sense of its Severity: An Effect it never would produce, if it were only such, as an Offender is willing and pleas'd to undergo. As for other Sufferings, which happen to be undergone in Wars and Engagements; or which one bears innocently, being wrongfully and injuriously done him; the Former not being inflicted by Authority, and the Other not referring to an antecedent Crime, they do neither of them import the proper Sense and Meaning of a *Punishment*.

V. *Inflicted by the Government.*

BY our *Natural Liberty*, we enjoy the Privilege to have no other Superiour but GOD over us, * and only to be obnoxious to Punishments

* The Author here reasons on a false *Hypothesis*. He pretends, as is plain from what is here laid down That no one can inflict any Punishment on another, unless he be his Superiour. Now in the State of Nature all are equal; and then all Natural Laws would be useless and insignificant, if a Power, in such Case, were no where lodged to punish those who violate them, either with Respect to any private Person, or to Mankind in general; the Preservation of which is the End of these Laws, to the Observation of which all Men stand under a common Obligation. In this independent State, every one has a Right to put these Laws in Execution, and to punish the Person who violates them. See *L. N. N.* Lib. 8. Chap. 3. § 4.

L. N. N. l. 8. c. 3. § 7. Divine. But since the Introduction of *Government*, it is allow'd to be a Branch of the Office of those in whose Hands the Government is intrusted, for the Good of all Communities; that upon the Representation of the unlawful Practices of Subjects before them, they should have Power effectually to *coerce*, [punish and restrain] the same, that People may live together in Safety.

VI. *The Benefit of them.* NEITHER does there seem to be any Thing of Inequality in this; that *he who* Evil *does* should Evil *suffer*. Yet in the Course of Human Punishments, we are not solely to regard the Quality of the Crime, but likewise to have an Eye upon *the Benefit of the Punishment*: By no means executing it on purpose to feed the Fancy of the Party injur'd, or to give him Pleasure in the Pains and Sufferings of his Adversary: Because such Kind of Pleasure is absolutely inhumane, as well as contrary to the Disposition of a good Fellow-Subject.

VII. *The End of them.* L. N. N. l. 8. c. 3. § 8. THE *Genuine End of Punishments in a State*, is, The Prevention of Wrongs and Injuries; which then have their Effect, when he who does the Injury is *amended*, or for the future *incapacitated* to do more, or others taking *Example* from his Sufferings are deterr'd from like Practices; or, to express it a nother way, That which a Government designs in the Matter of Punishments, is the *Good*, either of the Offender, or the Party offended, or generally of All its Subjects.

VIII. *Upon the Offender.* L. N. N. l. 8. c. 3. § 9. FIRST, We consider the *Good of the Offender*: In whose Mind the Smart of the Punishment serves to work an Alteration towards Amendment, and corrects the Desire of doing the

the same again. Divers Communities leave such Kind of Punishments as are qualified with this End, to be exercis'd by Masters over the Members of their own Families. But it never was thought good they should proceed so far as to *Death*, because, he that is dead is past *Amendment*.

IX. *Upon the Party offended.* L. N. N. l. 8 c. 3. § 11.

In the next Place, a Punishment intends the *Good of the Party offended:* securing him, that he suffer not the like Mischief for the future, either from the same or other Persons. He becomes secure from being again injured in like Manner by the same Person; first, By the Death of the Criminal; or, secondly, If he be allow'd Life, by depriving him of Power to hurt; as, by keeping him in Custody, taking his Arms, or other Instruments of Mischief, from him, securing him in some distant Place, and the like; or, thirdly, By obliging him to learn, at his own Peril, not to incur farther Guilt, or offend any more. But then to secure the Party offended from suffering the like Injury from other Hands, it is necessary that the Offender be punished in a most Open and Publick Manner, whereby the Criminal may become an Example to all others; and that his Punishment be accompanied with such Circumstances of *Form* and *Pomp*, as are apt to strike a Dread into as many as behold it.

X. *Upon All.* L. N. N. l. 8. c. 5. § 12.

In a Word, the *Good of all People* is intended by the Execution of Punishment in this Manner. For by this means, Care is taken, that he who has done a Mischief to one, shall do no such Mischief again to another: The Terrour of whose Example may also be an Antidote for the rest against the Temptations to

his Crime: And this Good accrues after the same Manner as the former.

XI. *Internal Acts of the Mind, not subject to them.* L. N. N. l. 8. c. 3. § 14.

But if, together with the End of Punishments, we consider the Condition of Human Nature, we shall see, That *all Sins are not of that Quality, that they must necessarily fall under the Sentence of a Court of Justice.* The *Acts of the Mind within it self,* which are merely internal; such as, Thinking upon a Sin with Delight, coveting, desiring, resolving to do an ill Thing, but without effect; though they should be afterwards made known by a Man's own Confession, yet are all exempted from the Stroke of human Punishments. For so long as those *internal* Motions have not broken forth into Action, nor occasion'd the Prejudice of any one, whom does it concern or profit to cause the Author to suffer for the same?

XII. *Nor minute Lapses.*

It would also be over severe in Laws, to punish the more minute Lapses which may daily happen in the Actions of Men; when, in the Condition of our Natures, the greatest Attention cannot prevent them.

XIII. *And other Actions.* L. N. N. l. 8. c. 3. § 14.

There are many Instances of Actions more, of which the Publick Laws dissemble the taking of any Notice, *for the sake of the Publick Peace.* As sometimes, because a good Act shines with greater Glory, if it seems not to have been undertaken upon Fear of human Punishment; or, perhaps, it is not altogether worth the troubling of Judges and Courts about it; or, it is a Matter extraordinarily difficult to be decided; or it may be some old inveterate Evil, which cannot be removed, without causing a Convulsion in the State.

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In fine, it is absolutely necessary, That *all those Disorders of the Mind should be exempted from Punishment, that are the Effects of the common Corruption of Mankind*; such as Ambition, Avarice, Rudeness, Ingratitude, Hypocrisy, Envy, Pride, Anger, private Grudges, and the like. All these of Necessity, must be exempted from the Cognizance of *Human* Judicatures, so long as they break not out into publick Enormities; seeing they abound to that Degree, that if you should severely pursue them with Punishments, there would be no People left to be the Subjects of Government. XIV. *Nor the Vices of the Mind.*

Farther, When there have been Crimes committed, which are punishable by the Civil Judicature, it is not *always* necessary to execute the Sentence of Justice upon them. For in some Cases a *Pardon* may possibly be extended to Criminals, with a great deal of *Reason*, (as it never ought to be granted without it;) and amongst other Reasons, *these* especially may be some: *That* the Ends, which are intended by Punishments, seem not so necessary to be attended to in the Case in Question: *Where* a Pardon may produce more *Good* than the Punishment, and the said Ends be more conveniently obtain'd another way: *That* the Prisoner can allege those excellent Merits of his own or of his Family towards the Common-wealth, which deserve a singular Reward: *That* he is famous for some remarkable rare Art or other; or, it is hoped, will wash away the Stain of his Crime by performing some Noble Exploit: *That* Ignorance had a great Share in the Case, tho' not altogether such as to render the Criminal blameless; Or, *That a particular* Reason of XV. *Of Pardon.* L. N. N. l. 8. c. 3. § 15.

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of the Law ceases in a Fact of the same Nature with his. For these Reasons, and oftentimes for the *Number* of the Offenders, being very great, Pardons must be granted, rather than the Community shall be exhausted by Punishments.

XVI. *The greatness of a Crime* L. N. N. l. 8. c. 3. § 18.

To take an Estimate of the *Greatness of any Crime,* there is to be consider'd, first, The Object against which it is commited; how Noble and Precious *that* is: Then, The *Effects*; what Damage, more or less it has done to the Common-wealth: And next, The *Pravity* of the Author's Intention, which is to be collected by several Signs and Circumstances: As, Whether he might not easily have resisted the Occasions that did tempt him to it? and besides the common Reason, Whether there was not a peculiar one for his Forbearance? What *Circumstances* aggravate the Fact? or, Is he not of a Soul dispos'd to resist the Allurements of a Temptation? Inquiring yet farther, Whether he was not the *Principal* in the Commission? or, Was he seduced by the Example of others? Did he commit it once, or oftner, or after Admonition spent in vain upon him?

XVII. *Measure and Kind of Punishment.* L. N. N. l. 8 c. 3. § 24.

But for the precise *Kind and Measure of Punishment,* that is fit to be pronounced upon each Crime, it belongs to the Authority of the Government to determine it, with an intire Regard to the Good of the Commonwealth. Whence the *same* Punishment may, and oftentimes is, impos'd upon two *unequal* Crimes; understanding the Equality that is commanded to be regarded by Judges, to mean the particular Case of those Criminals, who being guilty of the same Kind of Fact, the one shall

ſhall not be acquitted, and the other condemned without very ſufficient Reaſon. And although Men ought to ſhew to one another all the Mercy and Tenderneſs that may be; yet the Good of the Nation, and the Security of its Subjects, require, upon Occaſion, when either a Fact appears moſt pernicious to the Publick, or there is need of a ſharp Medicine to obviate the growing Vices of the Age, that the Government ſhould *aggravate its Puniſhments*: which deſerve at all times to be carried high enough, to be ſufficient to controll the Propenſity of Men towards the Sins againſt which thoſe Puniſhments are levell'd. And let the Government obſerve, That no greater Puniſhments be inflicted, than the Law aſſigns, unleſs the Fact be aggravated by very heinous Circumſtances.

XVIII. *The Perſon of the Offender.* L. N. N. l. 8. c. 3. § 25.

MOREOVER, Since the ſame Puniſhment, not affecting all Perſons alike, meets with various Returns to the Deſign thereof, of reſtraining in them the Itch of Evil-doing, according to the Diſpoſition of every one that incounters it; therefore both in the Deſignation of Puniſhments in general, and in the Application of them to Particulars, it is proper *to conſider the Perſon of the Offender*, in Conjunction with as many Qualities as concur to augment or diminiſh the Senſe of Puniſhment; as, Age, Sex, Condition, Riches, Strength, and the like.

XIX. *Effects of one Man's Crime upon another.*

NOT but that it frequently happens, that the Crime of one *ſhall occaſion the Inconvenience of many others*, even to the Intercepting of a future Bleſſing from them that they juſtly expected to receive. So when an Eſtate is confiſcated

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L. N. N. 1. 8. c. 3. § 33. for a Crime done by the Parents, the innocent Children are plunged into Beggary. And when a Prisoner upon Bail makes his Escape, the Bail is forced to answer the Condition of the Bond, not as a *Delinquent*, but because it was his voluntary Act to oblige himself to stand to such an Event.

XX. *Crimes done by Communities.* L. N. N. 1. 8. c. 3. § 28. FROM whence it follows, That as no Man in a Court of Civil Judicature, can properly be punish'd for another's Crime; so in the *Commission of a Crime by a Community*, whoever does not consent to it, shall not be condemn'd for it; nor suffer the Loss of any Thing he does not hold in the Name and Service of the Community, farther than it is usual on these Occasions for the Innocent to feel the Smart of the *Common Misfortune*. When all those are dead, who did consent or assist towards the said Crime; then the Guilt thereof expires, and the Community returns to its pristine Innocency.

CHAP. XIV.

Of REPUTATION.

I. *Defined.* L. N. N. 1. 8. c. 4. § 1. REPUTATION in General, is that *Value* set upon Persons in the World, on some account or other, by which they are compar'd and equaliz'd, preferr'd or postpon'd to others.

II. *Divided.* IT is divided into *Simple*, and *Accumulative*; and may be consider'd as to both, either in a People

People living *at their Natural Liberty*, or united together under a Government.

SIMPLE *Reputation amongst a People in their Natural Liberty*, consists chiefly in this, That by their Behaviour, they have the Honour to be esteem'd, and treated with, as Good Men, ready to comport themselves in Society with others, according to the Prescription of the Law of Nature. III. *Simple Reputation in a State of Nature.* L. N. N. l. 8. c. 4. § 2.

THE Praise whereof remains *Entire*, so long as no evil and enormous Fact is knowingly and wilfully done by them, with a wicked Purpose, to violate the Laws of Nature towards their Neighbour. Hence every one naturally is to pass for a Good Man, 'till the contrary is prov'd upon him. IV. *How preserved.* L. N. N. l. 8. c. 4. § 3.

THE same is *diminish'd* by Transgression against the Law of Nature maliciously, in any heinous Matters; which serves also as a Caution for the future, to treat with him that does it, with greater Circumspection; though this *Stain may be wash'd of*, either by a voluntary Reparation of Damages, or the Testimonies of a serious Repentance. V. *Diminished, and repaired.* L. N. N. l. 8. c. 4. § 4.

BUT by a Course of Life directly tending to do Mischief, and the seeking of Advantages to themselves, by open and promiscuous Injuries towards others, the Reputation describ'd is *totally destroyed*. And till Men of this sort repent, and change their Ways, they may lawfully be used as Common Enemies, by every one, that is in any manner liable to come within the Reach of their Outrages: Since it is not impossible, even for those Men, to *retrieve their Credit*; if after they have repair'd all their Damages and obtain'd their Pardons, they VI. *Lost, and recovered.* L. N. N. l. 8. c. 4. § 5.

they renounce their vicious, and embrace for the Time to come, an honest Course of living.

VII. *Under Government.* L. N. N. l. 8. c. 4. § 6.

SIMPLE Reputation, with regard to such as live under Civil Government, is that Sort of Esteem, by which a Man is looked on at the lowest, as a common but a sound Member of the State: Or when a Man hath not been declar'd a corrupt Member, according to the Laws and Customs of the State, but is supposed to be a good Subject, and is look'd upon accordingly, and valu'd for such.

VIII. *Lost by an ill Condition of Life,* L. N. N. l. 8. c. 4. § 7.

HERE therefore the same *perishes*, either by Reason *of the Course of a Man's Life*, or in *Consequence of some Crime*. The first is the Case of *Slaves*; whose Condition, tho' naturally having no Turpitude in it, in many Communities places them, if possible, below Nothing. As likewise that of *Panders*, *Whores*, and such like, whose Lives are accompanied with Vice, at least the Scandal of it. For tho', whilst the Community thinks fit publickly to tolerate them, they participate of the Benefit of the Common Protection; yet they ought however to be excluded the Society of Civil Persons. And we may conclude no less of others, who are employ'd in Works of Nastiness and Contempt, tho' *naturally* not including any Vitiousness in them.

IX. *And his Crimes.*

BY *Crimes* Men utterly lose their Reputation, when the Laws set a Brand of Infamy upon them for the same; either by Death, and so their Memory is set under Disgrace for ever; or by Banishment out of the Community, or by Confinement, being consider'd as scandalous and corrupt Members.

OTHERWISE

V. *Otherwise Indelible.* L. N. N. l. 8. c. 4. § 9.

OTHERWISE it is very clear, that the *Natural Honour of no Man can be taken from him solely by the Will of the Government.* For how can it be understood, that the Government should have a Power collated on it, which conduces in no Degree to the Benefit of the Common-wealth? So neither does it seem, as if a real Infamy can be contracted by executing the Commands of the Government, barely in the Quality of a Minister, or Officer.

XI. *Accumulative Reputation.* L. N. N. l. 8. c. 4. § 11.

ACCUMULATIVE *Reputation* we call *that*, by which Persons, reciprocally equal as to their Natural Dignity, come to be preferr'd to one another according to those Accompishments, which use to move the Minds of People to pay them Honour: For *Honour* is properly, the Signification of our Judgment concerning the Excellency of another Person.

XII. *Twofold.*

THIS Sort of Reputation may be consider'd, either as amongst those who continue in the *Liberty of a State of Nature*, or amongst the *Members of the same Common-wealth*. We will examine, what the *Foundations* of it are, and how they produce in People, both a *Capacity* to expect the being Honoured by others; and an *actual Right, strictly so called*, to demand it of them as their Due.

XIII. *The Grounds of it.* L. N. N. l. 8. c. 4. § 12.

THE *Foundations of an Accumulative Reputation*, are in General reckoned to be all Manner of Endowments, either *really* containing, or such as are supposed to contain, some great Excellency and Perfection, which has plainly a Tendency in its Effects to answer the Ends of the Laws of Nature or Societies. Such are Acuteness and Readiness of Wit, a Capacity to understand several Arts and Sciences, a sound Judgment in Business,

Business, a steddy Spirit, immoveable by outward Occurrences, and equally superiour to Flatteries and Terrours : Eloquence, Beauty, Riches ; but, more especially the Performing of good and brave Actions.

XIV. *The Distinction of a Capacity and a Right to it.* L. N. N. l. 8. c. 4. § 14.

All these Things together, produce a *Capacity* to receive Honour, *not a Right.* So that if any Person should decline the Payment of his Veneration to them, he may deserve to be taken Notice of for his Incivility, but not for an Injury. For a *perfect Right* to be honoured by others, that bear the Ensigns thereof, proceeds either from an Authority over them ; or from some mutual Agreement ; or from a Law that is made and approved by one Common Lord and Master.

XV. *Amongst Princes and States.* L. N. N. l. 8. c. 4. § 20.

Amongst *Princes* and *independent States,* they usually alledge, for *Honour and Precedence,* the Antiquity of their Kingdoms and Families, the Extent and Richness of their Territories, their Power Abroad and at Home, and the Splendour of their Styles. Yet neither will all these Pretences beget a *perfect Right* in any Prince or State to have the Precedence of others, unless the same has been first obtained by Concession or Treaty.

XVI. *Amongst Subjects.* L. N. N. l. 8. c. 4. § 24.

Amongst *Subjects,* the *Degree of Honour is determined by the Prince,* who wisely therein regards the Excellency of each Person, and his Ability to advance the publick Good. And whatever Honour a Subject receives in this Nature, as he may justly *claim* it against his Fellow-Subject, so he ought no less to satisfie himself in the quiet Enjoyment of it.

Chap.

CHAP. XV.

Of the Power *of* Governours *over the* *Goods of their* Subjects.

AS it wholly lies at the Pleasure of supreme Governours, to appoint with what Restriction they will allow their Subjects to have Power over the Goods which *themselves* derive upon them; so also over the Goods of the Subjects *own acquiring* by their proper Industry or otherwise, the said Governours claim a *threefold Kind of Right*, resulting from the Nature, and as being necessary to the End, of Communities. I. *Threefold.* L. N. N. l. 8. c. 5. § 1.

THEIR First, consists in this; That it belongs to them to *prescribe Laws* to the Subjects, about the Measure and Quality of their Possessions; and which way to transfer the same from Hand to Hand, with other Particulars of the like Nature; and how to apply them in the Use to the best Advantage of the whole Body. II. *By Laws.* L. N. N. l. 8. c. 5. § 3.

BY the Second, they claim to appropriate to themselves, out of the Goods of the Subjects, a *Portion* by the Name of *Tribute* and *Customs*. And it is but reasonable, that since the Lives and Fortunes of all the Members are defended by the Community, the necessary Charges thereof should be defrayed by a general Contribution. For he must be very impudent indeed, who will enjoy the Protection and Priviledges of a Place, and yet contribute nothing in Goods or Service towards its Preservation. Only herein there will be great Occasion for Governours to accommodate themselves with Prudence to the querulous III. *By Taxes and Customs.* L. N. N. l. 8. c. 5. § 4.

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Temper of common People; and let them endeavour to levy the Money the most insensibly that they can: Observing first an Equality towards all, and then to lay the Taxes rather upon the smaller Commodities of various Kinds, than upon the Chief in a more uniform Way.

IV. *By Seisure for publick Use extraordinary.* L. N. N. l. 8. c. 5. § 7.

THE Third, is a * *Right of Extraordinary Dominion*, consisting in this; That upon an *urgent Necessity of State*, the Goods of any Subject, of which the present Occasion has need, may be taken and applied to *publick Uses*, tho' far exceeding the Proportion, that the Party is bound to contribute towards the Expences of the Common-wealth, For which Reason, as much (if it be possible) ought to be refunded to him again, either out of the publick Stock, or by the Contribution of the Rest of the Subjects.

V. *Publick Revenues unalienable.* L. N. N. l. 8. c. 5. § 9.

BESIDE these three Pretensions over the *private*, in divers Communities there are some particularly call'd, the *publick Estate*; which carry also the Name of the *Kingdom's, or the Prince's Patrimony*, according as they are distributed into the *Treasury* or the *Privy Purse*. The Latter serves for the Maintenance of the Prince and his Family; who has a Property in it during Life, and may dispose of the Profits thence arising at his Pleasure: But the Use of the Other is appropriated for the publick Occasions of the Kingdom; the Prince officiating therein as Administrator only, and standing obliged to apply all to the Purposes to which they are designed. And neither of the two *Patrimonies* can be *alienated* by the Prince without the People's Consent.

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* *Grotius de Jure B. & P.* l. 1. c. 1. § 6. L. 2. c. 14. § 7. L. 3. c. 19. § 7. *Junct.* l. 3. c. 1. § 15.

MUCH

MUCH less can a *whole Kingdom* (that is not held *patrimonially*) or any *Part* of it, be *alienated without their Consent to it*: And in the latter Case particularly the *Consent of that Part that is to be alienated.* As on the other Hand no Subject against the Will of his Community, can possibly *disingage himself from the Bonds of his Duty and Allegiance to it*; unless the Force of foreign Enemies reduces him to such a Condition, that he has no other Way to be safe. VI. *Neither Royal Power nor Allegiance, alienable.* L. N. N. l. 8. c. 5. § 10.

CHAP. XVI.

Of WAR *and* PEACE.

ALTHO' nothing is more agreeable to the *Laws of Nature*, than the mutual Peace of Men with one another, preserved by the voluntary Application of each Person to his Duty; living together in a State of Peace, being a peculiar Distinction of Men from Brutes; yet it is sometimes both *Lawful and Necessary to go to War*, when by means of another's Injustice, we cannot, without the Use of Force, preserve what is our own, nor injoy those Rights which are properly ours. But here common Prudence and Humanity do admonish us * to forbear our Arms there, where the Prosecution of the Injuries we resent, is likely to return more Hurt upon us and ours, than it can do Good. I. *Necessity of War sometimes.* L. N. N. l. 8. c. 6. § 2.

THE *just Causes upon which a War may be undertaken*, come all to these: The Preservation II. *Just Causes of War.*

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* *Grotius de Jure Belli & Pacis*, l. 1. c. 2.

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L. N. N. l. 8. c. 6. § 4. of our selves, and what we have, against an unjust Invasion; and this Sort of War is called * *Defensive.* The Maintenance and Recovery of our Rights from those that refuse to pay them: The Reparation of Injuries done to us, and Caution against them for the future. And this Sort of War is called *Offensive.*

III. *Amicable Composition.* NOT that upon a Prince's taking himself to be injur'd, he is presently to have Recourse to Arms, especially if any Thing about the Right or Fact in Controversie remains yet under Dispute. † But first let him try to compose the Matter in *an amicable Way,* by Treaties, by Appeal to Arbitrators, or by submitting the Matter in Question to the Decision of a Lot; ‖ and these Methods are the rather to be chosen by that Party who *claims* from another, because *Possession,* with any Shew of Right, is wont to meet with the most favourable Constructions.

IV. *Unjust Causes of War.* L. N. N. l. 8. c. 6. § 5. THE *unjust Causes of War,* are either those which *openly to all the World are such*; as, Ambition and Covetousness, and what may be reduced thereto: Or ** those that admit of a faint and imperfect *Colour* to be pretended in their Excuse. Of this Kind there is Variety: As, The Fear of a Neighbour's growing Wealth and Power; Conveniency of a Possession, to which yet no Right can be made out; Desire of a better Habitation; The Denial of common Favours; The Folly of the Possessor; The Desire of extinguishing another's Title,

* *Grotius de Jure Belli & Pacis,* l. 2. c. 1, &c. to l. 2. c. 23.

† *Grotius de Jure Belli & Pacis,* lib. 2. cap. 23, 24.

‖ *Grotius de Jure Belli & Pacis,* lib. 2. c. 23. § 12.

** *Grotius,* l. 2. c. 24. § 4.

lawfully

lawfully acquired, because it may be prejudicial to us; * and many more.

AND tho' the most proper Way of Acting in War, is by that of Force and Terrour, yet it is altogether as lawful to attack an Enemy by *Stratagems and Wiles*, provided that the Faith and Trust which you give him is inviolably observed. † It is lawful to deceive him by Stories and feigned Narrations, not by Promises and Covenants. V. *Of Deceit in War.* L. N. N. l. 8. c. 6. § 6.

BUT concerning the *Violence* which may be used against him, and what belongs to him; we must distinguish betwixt what it is possible for him to *suffer without Injustice*, and what we may easily *inflict without the Breach of Humanity*. Whoever declares himself my Enemy, as he makes Profession by that very Act of enterprizing upon me the greatest Mischiefs in the World; so at the same Time he fully indulges me the Leave to imploy the utmost of my Power, without Mercy, against himself. || Yet Humanity commands me, as far as the Fury of War will permit, that I do my Enemy no more Harm, than the Defence or Vindication of my Right requires, with Care to my Security for the Time to come. VI. *Violence.* L. N. N. l. 8. c. 6 § 7.

WE commonly divide War into *Solemn* and *less Solemn*. To a *Solemn* War it is required, That it be made on both Sides by the Authority of the Sovereign Governours; and preceeded by a publick Declaration. The *other* either is not publickly denounced, or, perhaps, is begun VII. *Solemn and less solemn War.* L. N. N. l. 8. c. 6. § 9.

* *Grotius*, l. 2. c. 1. § 17. Cap. 22. § 5.
† *Grotius de Jure Belli & Pacis*, l. 3. c. 1. § 6, &c.
|| *Grotius*, l. 3. c. 4. § 2. Cap. 11, 12, &c.

 amongst

amongst private Persons. * To which latter Head belong also *Civil Wars*.

VIII. *Power of making War.* L. N. N. l. 8. c. 6. § 10.

As the *Power of making War*, in all Nations lies in the same Hands, that are intrusted with the Government; † so it is a Matter above the Authority of a *subordinate Magistrate* to ingage in, without a Delegation from thence, tho' he could suppose with Reason, that were they consulted upon the Matter, they would be pleased with it.

Indeed all Military Governours of fortified Places and Provinces, having Forces under them to command upon the Defence thereof, may understand it to be injoyn'd them by the very Design of their Imployments, to repel an Invader, from the Parts committed to their Trust, by all the Ways they can. But they are not rashly to carry the War into an Enemy's Country.

IX. *Wars occasioned by protecting of Refugees.* L. N. N. l. 8. c. 6. § 12.

In a State of Natural Liberty, a Person is assaulted by Force only for the Injuries that are done by himself. But in a Community, a War often happens upon the *Governour* or *the whole Body*, when *neither of them* has committed any Thing. To make this appear just, it is necessary, the Act of a Third Party must by some way or other pass upon them. Now Governours do partake of the Offences, not only of their proper Subjects, but of others that occasionally flee to them; if either the Offences are done by their *Permission*, or that they *receive and protect* the Offender. The Sufferance of an Offence becomes then blameable, when at the

* *Grotius de Jure Belli & Pacis*, l. 1. c. 3. § 4.
† *Grotius*, &c. l. 1. c. 3. § 1.

same

same Time that one knows of the doing it, he has a Power to hinder it. Things openly and frequently done by the Subjects, are supposed to be known to their Governours; in whom it is always presumed there is a Power also to prohibit, unless a manifest Proof appears of its Defect. Yet to make it an Occasion of War, to give Admittance and Protection to a Criminal, who flies to us for the Sake only of escaping his Punishment, is what must proceed rather by Virtue of a particular Agreement betwixt Allies and Neighbours, than from any *common Obligation*; unless the Fugitive, being in our Dominions, contrives Hostilities against the Common-wealth he deserts.

ANOTHER received Custom betwixt Nations, is, That the Goods and Estate of every Subject may be answerable to make good the Debts of that State of which they are originally Members; as also for all that Wrong which that State may offer to Foreigners, or that Justice it may refuse to shew them, insomuch, that the Foreign Nation, whose Subjects have been thus injur'd by this State, may retaliate the Wrong upon the Effects or Persons of such Subjects of this State, as may be found among them. And these Sorts of Executions are usually called *Reprisals*, * and commonly prove the Forerunners of War. Those States who are the Aggressors, and give just Cause for such Reprisals, ought to refund and make Reparation to their Subjects upon whom they have thus brought Loss and Damage, by making them liable to have such Reprisals made upon them.

X. *Reprisals.* L. N. N. l. 8. c. 6. § 13.

* *Grotius de Jure Belli & Pacis*, l. 3. c. 2. § 4.

XI. *Of Wars in the Defence of others.* L. N. N. l. 8. c. 6. § 14.

A War may be made by a Person, not only *for himself, but for another.* In order to do this with Honesty, it is requisite, that He for whom the War is undertaken, shall have a just Cause; and his Friend, a probable Reason, why he will become an Enemy to *that other* for his sake. Amongst those, in whose Behalf it is not only lawful, but our Duty to make War, there is, in the first Place, *our Natural Subjects,* as well severally, as the universal Body of them; provided, that the War will not evidently involve the State in greater Mischiefs still. Next, there are the *Allies,* with whom we have engaged to associate our Arms by Treaty: Yet, therein not only giving the Precedence to our own Subjects, if they should chance to stand in need of Assistance at the same Juncture; but presupposing also, that the Allies have a just Cause, and begin the War with Prudence. * After our Allies, our *Friends* deserve to be assisted by us, even without our Obligation to do it by a special Promise. And where there is no other Reason, the common Relation alone of Men to Men, may be sufficient, when the Party imploring our Aid is unjustly oppressed, to engage our Endeavours, as far as with Convenience we are able, to promote his Defence.

XII. *The Liberty of killing, &c. in War.* L. N. N. l. 8. c. 6. § 18.

The *Liberty that is in War,* of killing, plundering, and laying all Things waste, extends it self to so very large a Compass, that tho' a Man carries his Rage beyond the *uttermost Bounds of Humanity,* yet in the Opinion of Nations, he is not to be accounted infamous, or one that ought to be avoided by Persons of

* *Grotius de Jure Belli & Pacis,* l. 2. c. 25.

Worth.

Worth. * Excepting, that amongst the more Civilized World, they look upon some particular Methods, of doing Hurt to Enemies, to *be base*; as poisoning Fountains, or corrupting of Soldiers or Subjects to kill their Masters, *&c.*

XIII. *Of things taken in War.* L. N. N. l. 8. c. 6. § 20.

MOVEABLE *Things* are understood to be *Taken* in War then, when they are carried out of the Reach of the Enemy who before possessed them. † And *Things immoveable*, when we have them within our Custody so, that we can beat the Enemy away from thence. Yet the Right of the former Possessor to retake the same, is never utterly extinguished, till he renounces all his Pretensions to them by a subsequent Agreement. For without this, it will be always lawful, by Force, to retrieve again what by Force is lost. The Soldiers fight by the Authority of the Publick; and whatever they obtain from the Enemy, they get it not for themselves, but properly for the Community they serve. Only it is customary in most Places, to leave to them by Connivance the Moveables, especially those of small Value, that they take, in the Place of a Reward, or perhaps instead of their Pay, and for an Incouragement to them to be free of their Blood. When *Things immoveable* that have been lost to, are retaken *from* the Enemy, they return into the Possession of the former Owners: || And Moveables ought to do the same; but that amongst

* *Grotius de Jure Belli & Pacis*, l. 3. c. 1, *&c.* c. 4. § 15, *&c.*

† *Grotius*, l. 3. c. 6.

|| *Grotius de Jure Belli & Pacis*, l. 3. c. 9. § 13.

most People they are delivered over and foregone as a Prey to the Army.

XIV. *Conquest.* L. N. N. l. 8. c. 6. § 24. EMPIRE also or Government comes to be acquired by War, not only over the *particular or single Persons conquered*, but *intire States*. * To render this lawful, and binding upon the Consciences of the Subjects, it is necessary, That on the one Side the Subjects swear Fidelity to the Conqueror; and on the other, that the Conqueror cast off the State and Disposition of an Enemy towards *them*.

XV. *Truce.* L. N. N. l. 8. c. 7. § 3. THE Proceedings of War are suspended by *a Truce*; which is an Agreement (the State and Occasion of the War remaining still the same as before,) to abstain on both Sides from all Acts of Hostility for some Time appointed. When that is past, if there be no Peace concluded in the *Interim*, they resume their Hostilities again, without the Formality of a new Declaration.

XVI. *Treaties of Truce.* NOW *Truces* are either *such* as they consent to during the Continuance of the Expedition, whilst both Sides keep their Forces on foot; or *those*, on which they quite disband their Forces, and lay aside all Military Preparations. The first are seldom taken but for a small Time. The others they *may* and usually *do* take for a Continuance so long, as to carry the Face of a Peace; and sometimes also the very Name, with the Addition of some Term of Years, only to distinguish it from a *perfect Peace* indeed, which regularly is Eternal, and extinguishes the Causes of the War for ever. † Those that they call *tacit Truces*, oblige to nothing. For as on

* *Grotius de Jure Belli & Pacis*, l. 3. c. 7. & c. 15.
† *Grotius de Jure Belli & Pacis*, l. 3. c. 21. § 1. &c.

both

both Sides they lie quiet for their Pleasure, so, whenever they think fit, they may break out into Acts of Hostility.

But when a Peace is mutually ratified by each Sovereign Governour, upon Articles and Conditions agreed betwixt themselves, which they ingage to observe and put in Execution faithfully by a Time prescribed; then a War is perfectly ended. * In Confirmation whereof, it is usual, not only for both Parties to take their Oaths and interchange Hostages; but for some others oftentimes, especially amongst the Assistants at the Treaty, to undertake the *Guaranty* of the same, with Promises of Aid to him who ever is first injured by the other, in Contravention to the Articles of the Peace that is made. XVII. *Treaties of Peace.* L. N. N. l. 8. c. 8.

* *Grotius*, l. 3. c. 20. § 2, *&c.*

Chap. XVII.

Of ALLIANCES.

ALLIANCES interchangeably passed betwixt Sovereign Governours, are of good Use both in Times of War and Peace. * They may be *divided*, in Respect of their Subject, either into such as *reinforce the Duty* already incumbent on us from the *Law of Nature*; or such I. *Alliances twofold.* L. N. N. l. 8. c. 9. § 1.

* *Grotius de Jure Belli & Pacis*, l. 2. c. 15.

as

as *superadd something* to the Precepts of the Law; at least, they determine their Obligation to such or such particular Actions, which before seemed indefinite.

II. *Treaties of Peace.* L. N. N. l. 8. c. 9. § 2. By the *first* Sort are meant *Treaties of Peace*, wherein nothing more is agreed upon than the simple Exercise of Humanity towards one another, or a Forbearance of Mischief and Violence. Or, perhaps, they may establish a general Sort of Friendship betwixt them, not mentioning Particulars; or fix the Rules of Hospitality and Commerce, according to the Directions of the *Law of Nature*.

III. *Equal Leagues.* L. N. N. l. 8. c. 9. § 3. The others of the latter Sort, are called *Leagues*, and are either *Equal* or *Unequal*. *Equal Leagues* are so far composed of the same Conditions on both Sides, that they not only promise what is *Equal* absolutely, or at least in Proportion to the Abilities of the Person; but they stipulate in such a Manner too, that neither Party is to the other obnoxious, or in a worse Condition.

IV. *Unequal.* L. N. N l. 8. c. 9. § 4. Unequal *Leagues* are those, wherein Conditions are agreed upon that are unequal, and render one Side worse than the other. * This Inequality may be either on the Part of the *Superiour*, or else of the *Inferiour Confederate*. For if the Superiour Confederate ingages to send the other Succours, unconditionally, not accepting of any Terms from him, or ingages to send a greater Proportion of them than He, the Inequality lies upon the *Superiour*. But if the League requires of the inferiour Confederate the Performance of more Things towards the Superiour, than

* *Grotius de Jure Belli & Pacis*, l. 1. c. 3. § 21.

than the Superiour performs towards him, the Inequality there no less evidently lies on the Side of the *Inferiour.*

V. *Conditions put upon Inferiours.* L. N. N. l. 8. c. 9. § 5.

AMONGST the Conditions required of an inferiour Ally, some contain a *Diminution of his Sovereign Power*, restraining him from the Exercise thereof in certain Cases without the Superiour's Consent. Others *impose no such Prejudice upon his Sovereignty*, but oblige him to the Performance of those we call *transitory* Duties, which once done, are ended altogether. As, to discharge the Pay of the other's Army; to restore the Expences of the War; to give a certain Sum of Money; to demolish his Fortifications, deliver Hostages, surrender his Ships, Arms, &c. And yet neither do some *perpetual* Duties *diminish the Sovereignty* of a Prince. As, to have the same Friends and Enemies with another, tho' the other be not reciprocally ingaged to have the same with him: To be obliged to erect no Fortifications here, nor to sail there, &c. To be bound to pay some certain friendly Reverence to the other's Majesty, and to conform with Modesty to his Pleasure.

VI. *The Subject of Leagues.*

BOTH these Sorts of Leagues, as well *Equal* as the *Unequal*, are wont to be contracted upon various Reasons, whereof such especially produce Effects of the strongest and most binding Complexion, as tend to the Conjunction of many Nations in a League that is to last for ever. But the *Common Subject* of the Leagues most in Use, is, either the Preservation of Commerce, or the Furnishing of Succours in a War, Offensive or Defensive.

VII. *Real and personal Leagues.*

THERE is another famous Division of Leagues into *Real*, and *Personal*. The *Latter* express

L. N. N. l. 8. c. 9. § 6. express such a near Regard to the Person of the Prince they are contracted with, that whenever he dies, they expire also. *Real Leagues* are those, which not being entred into in Consideration so much of any particular Prince or Governour, as of the Kingdom or Common-wealth, continue in full Force, even after the Death of the first Contracters of them.

VIII. *Sponsions.* L. N. N. l. 8. c. 9. § 12. THE next in Nature to *Leagues*, are the Agreements of a *Publick Minister*, made upon the Subject of the Affairs of the Prince his Master, without Orders for the same; which are usually called *Overtures*. The Conditions whereof impose no Obligation upon the Prince, till he shall please afterwards to ratifie them by his own Authority. And therefore, if, after the *Minister* has agreed upon the Compact absolutely, he cannot obtain his Prince's Confirmation of it; it lies upon himself to consider, what Satisfaction he ought to render to those, who, depending upon his Credit, have been deceived by him with insignificant Ingagements.

CHAP. XVIII.

The DUTY *of* *Subjects.*

I. *Twofold.* L. N. N. l. 7. c. 8. § 10. THE Duty of Subjects is either *General*, arising from the Common Obligation which they owe to the Government as *Subjects*: Or *Special*, upon the Account of some particular *Office* and *Imployment*, that the Government imposes upon them.

THEIR

THEIR *General* Duty respects the Demeanour of themseves severally, towards their Governours, the Common-wealth, and one another in particular. II. *General.*

TO their *Governours* they owe Honour, Fidelity, and Obedience. Beside that, they ought to entertain good and honourable *Thoughts* of them and their Actions, and *speak* accordingly; to acquiesce with Patience and Content under the present State of Things, not suffering their Desires to wander after Innovations; not adhering to any Persons, or admiring and honouring them, *more* than they do the Magistrates that are set over them. III. *Towards their Governours.*

IN Reference to the Common-wealth, their Duty is, to prefer the Happiness and Safety of it to the dearest Things they have in the World: To offer their Lives, Estates and Fortunes with Chearfulness towards its Preservation, and to study to promote its Glory and Welfare by all the Powers of their Industry and Wit. IV. *The Common-wealth;*

TOWARDS *one another*, their Behaviour ought to be friendly and peaceable, as serviceable, and as affable as they can make it; not to give Occasion of Trouble by Moroseness and Obstinacy, nor envying the Happiness of any, or interrupting their lawful and honest Injoyments. V. *One another.*

AND as for their *peculiar Duties*, as *Officers*, whether they influence the whole Body of the Nation, or are employed only about a certain Part of it, there is this one general Precept to be observed for all; *That* no Person affect or take upon him any Employment, of which he knows himself, by the Sense of his Disabilities (whether VI. *Their special Duties.*

Want

Want of Strength, Skill, Courage, *&c.*) to be unworthy and uncapable.

VII. *The Duty of Privy-Counsellors.* PARTICULARLY, let those who *assist at the Publick Counsels*, turn their Eyes round upon all Parts of the Common-wealth; and whatever Things they discover to be of Use, thereupon ingenuously and faithfully, without Partiality or corrupt Intentions, lay open their Observations: Let them not take their own Wealth and Grandure, but always the publick Good, for the End of their Counsels; nor flatter their Princes in their Humours to please them only. Let them abstain from Factions and unlawful Meetings or Associations.; dissemble not any thing that they ought to speak, nor betray what they ought to conceal. Let them approve themselves impenetrable to the Corruptions of Foreigners; and not postpone the publick Business to their private Concerns and Pleasures.

VIII. *The Clergy.* LET the *Clergy*, who are appointed publickly to administer in *the Sacred Offices of Religion*, perform their Work with Gravity and Attention; teaching the Worship of God, in Doctrines that are most true, and shewing themselves eminent Examples of what they preach to others; that the Dignity of their Function, and the Weight of their Doctrine, may suffer no Diminution by the Scandal of their ill led Lives.

IX. *Publick Readers.* LET such who are publickly imployed to *instruct the Minds of the People in the Knowledge of Arts and Sciences*, teach nothing that is false and pernicious; delivering their Truths so, that the Auditors may assent to them, not out of a Custom of hearing, but for the solid Reasons that attend them: And avoiding all Questions which incline to imbroil Civil Society; let them assure themselves,

themselves, that whatever human Science or Knowledge returns no Good to us, either as Men or Subjects, the same deserves their Censure as *impertinent* Vanity.

X. *Lawyers.*

LET those Magistrates, whose Office it is to *distribute Justice*, be easie of Access to all, and ready to protect the Common People against the Oppressions of the more mighty; administring Justice both to Rich and Poor, Inferiour and Superiour, with a perfect Equality. Let them not multiply Disputes unnecessarily; abstain from Corruption; be diligent in trying of Causes, and careful to lay aside all Affections that may obstruct *Sincerity* in Judgment; not fearing the Person of any Man while they are doing their Duty.

XI. *Officers of the Army.*

LET the *Officers of War* diligently Exercise their Men on all Occasions, and harden them for the enduring the Fatigues of a Military Life, and inviolably preserve good Discipline among them. Let them not rashly expose them to the Danger of the Enemy, nor defraud them of any of their Pay or Provisions; but procure it for them with all the Readiness they are able, and keep them in the Love of their Country, without ever seducing them to serve against it.

XII. *Soldiers.*

ON the other Hand, let the *Soldiers* be content with their Pay, without plundering, or harrassing the Inhabitants. Let them perform their Duty couragiously and generously, in the Defence of their Country; neither running upon Danger with Rashness, nor avoiding it with Fear: Let 'em exercise their Courage upon the Enemy, not their Comrades: And maintain their several Posts like Men, preferring an Honourable

nourable Death before a Dishonourable Flight and Life.

XIII. *Ambassadors and Envoys.* LET the *Ministers of the Common-wealth in foreign Parts*, be cautious and circumspect; quick to discern Solidities from Vanity, and Truths from Fables; in the highest Degree, Tenacious of Secrets, and obstinately averse to all Corruptions, out of their Care of the Good of the Common-wealth.

XIV. *Officers of the publick Revenues.* LET the *Officers for Collecting and Disposing of the Publick Revenue* have a Care of using needless Severities, and of increasing the Subjects Burthen for their own Gain, or through their troublesome and petulant Humours. Let them misapply nothing of the publick Stock; and satisfie the Persons who have Money to be paid out of it, without Delays unnecessary.

XV. *The Continuance of the Duties aforesaid.* L. N. N l. 8. c. 11. ALL these *Particular* Duties of Subjects, *continue* during the Time of Employment: And when that ceases, the other expire also. But their *General Duties are in Force*, so long as ever Men continue to be Subjects; that is, 'till by either the *express* or *tacit* Consent of the Nation, they depart thence, to fix the Seat of their Fortunes elsewhere; that they are banished and deprived of the Rights of Subjects for their Crimes; or, being overcome in Battle, they are forced to yield to the Disposal of the Conqueror.

The END.

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